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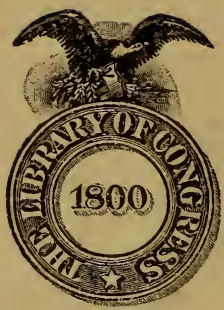

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WORKMEN'S COMPENSATION

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HISTORY AND OPERATION OF WORKMEN'S COMPENSATION IN GREAT BRITAIN

BY

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PRESENTED BY MR. SUTHERLAND

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BRITISH WORKMEN'S COMPENSATION ACTS.

HISTORY OF LEGISLATION AND ATTEMPTED LEGISLATION LEADING UP TO THE BRITISH WORKMEN'S COMPENSATION ACTS.

CHANGING ATTITUDE OF PUBLIC OPINION AS TO RELATIONS OF MASTER AND SERVANT.

The attitude of public opinion in England toward the relations of master and servant, of which the latest law regulating the accidents of industry is an outcome, is shown by the current decisions of judges, by attempted legislation, and by the legislation adopted.

That this attitude has changed greatly with the times is illustrated by Parliament's expression of view in 1825, that "all combinations of workmen are injurious to trade," while in 1875 a diametrically opposite view was held, and legislation was enacted in accordance with that view, it being then admitted by the Conservative leader, Lord Beaconsfield, that "for the first time in the history of the country employer and employed sit under equal laws." Again, in 1837 it is said that "principles of justice and good sense" require "that a workman should take on himself all the ordinary risks of his employment," while in 1897 the legislature said, "sound economic doctrine requires that the employer shall take all the ordinary and extraordinary risks involved in the carrying on of his industry."[1]

Examination of the workmen's compensation act of 1897, as amended in 1900, of the parliamentary steps by which it became law, and of its working, leads at the outset to an inquiry into judicial decisions of 60 years before, and the measures subsequently introduced into Parliament dealing with accidents which were the result of the growth and concentration of industries.

Common Law of Negligence.

In 1837 the general principles of the common law of negligence formed the only basis of recovery by a workman from his employer for an accident. Under these general principles a man was held to be responsible to others, including his servants, for injuries resulting from his own negligent acts, or from the negligent acts of his agents in the scope of their employment.

FELLOW-SERVANT DOCTRINE.

A decision rendered by Lord Abinger in 1837 under the common law of negligence, in the case of Priestly *v.* Fowler (3 Mees. & W. 1, Murph. & H., 305), is largely responsible for subsequent attempted

[1]See lectures by A. H. Ruegg, K. C.

legislation and for legislation enacted affecting a master's responsibility to his servant in case of negligence. In this decision was enunciated the doctrine "that a master could not be held responsible for an accident to his servant if such accident were caused by the negligence of a fellow servant," this being called "the fellow-servant doctrine," or "the doctrine of common employment." This doctrine, whether rightly or wrongly expounded in this decision, has operated as a defense to actions by servants against their masters for damages for injuries resulting from the negligence of their master's agents, if such agents were fellow servants, and has thus left the workman no redress in many cases where a stranger would have had redress.

The fellow-servant doctrine has been supported on the ground of its expediency (as preventing accumulation of alarming liability), on the ground of "its tending to prevent accidents" (by making each servant watch his fellow servant), and on the ground of "contract" (it being held to be one of the "implied terms" of the contract of employment). On the other hand, it has been the subject of bitter attack ever since it was enunciated, the statement having been made that it was an exception to the general law of negligence, putting workmen in a worse position than strangers to their employer; that it tended to make employers less careful in the selection of their employees; and that it was founded on a legal fiction, not on a voluntary contract.

The doctrine was entirely repudiated in Scotland until imposed on that country by a House of Lords' decision in 1858 (Bartonshall Coal Co. *v.* Reed, 3 McQ., H. L. Cas., 266). Though it remains operative to a certain extent, as modified by the employers' liability act of 1880, the practical workings of the workmen's compensation acts have largely counteracted its effect in the trades to which these acts apply. From allusions to it in debates in 1897 on the workmen's compensation act it seems likely to be soon entirely extinguished by Parliament.

Opinions of lawyers have differed as to the soundness of the decision, some holding that it rightly interpreted the existing common law, and others that it entirely without warrant engrafted a new doctrine into the law, but it is now according to high English legal authority almost universally admitted to be not only unjust, but also based on illogical reasoning.

DOCTRINE OF ASSUMED RISK.

The doctrine of assumed risk was another defense against an employer being held liable for accident, a doctrine generally based on an "implied term" in the contract of service. It was laid down in the case of Priestly *v.* Fowler (supra) that a servant "assumes all the ordinary risks which are incidental to his employment." (An important corollary of this doctrine of assumed risk is the aforementioned doctrine of fellow service, namely, that one of the risks incident to the service which the workman agrees to assume is the risk from the negligence of a fellow servant.) This implied term of his contract of service left the workman to bear the risks he knew or ought to have known, including the burden of dangers inherent in the business, such as unavoidable accidents, etc.

This doctrine has been justified on the ground that the servant is as well able to guard against the risk as his employer and that it is calculated to secure fidelity and prudence on the servants' part; on the other hand, it has been doubted whether it has the effect claimed for it, and it has been suggested that the "dread of personal injury" has always proved sufficient to bring into exercise the vigilance of the servant. Another attempt to justify the doctrine, on the ground that the amount of the workman's wages is adjusted with reference to the character of these risks, is answered by the statement that this theory is borne out only to a very limited extent by the actual facts of everyday life. (Labatt, sec. 259, etc.)

This principle was applied to the relations of master and servant in the case of Dynen *v.* Leach (26 L. J. Exch. N. S., 221) in 1857, and also in Saxton *v.* Hawkesworth (26 L. T. N. S., 851) in 1872, in such a manner that it was made to operate as a defense against a claim by the servant for damages for injuries resulting from "negligence actually existing" on the part of his master, on the theory that the servant had voluntarily agreed to encounter the risks from nonfulfillment of his master's legal duty as to system and appliances.

At the time of these early cases cited the voluntary agreement of the servant was implied from his continuing in the service of the employer, "with knowledge of the defects," so that if the servant remained in the service, with knowledge, he was debarred thereby from maintaining any action for recovery from the master for injuries resulting from such defects.

DOCTRINE OF VOLENTI NON FIT INJURIA.

This old defense of assumed risk, enumerated as a defense peculiar to the relation of master and servant, has been thought by some authorities to be only a form of the wider and more comprehensive doctrine of "volenti non fit injuria" of the common law, which means that "one who voluntarily incurs a risk can not recover." The latter has, by other authorities, however, been stated to be different from the doctrine of assumed risk, as the doctrine of assumed risk arises out of the contract of service between master and servant, while the doctrine volenti non fit injuria is a general principle applicable whether the relation of master and servant exists or not. (Thomas *v.* Quartermaine, L. R. 18 Q. B. Div., 685; 56 L. J. Q. B. N. S., 340. See Labatt, sec. 370, note.)

This doctrine of volenti non fit injuria was thought not to be a hardship on the servant in the same sense as were the fellow servant doctrine and the assumed risk doctrine, as it was common to the whole law of negligence and would be a good defense to a stranger's action against the master for damages for injuries resulting from negligence.

CONTRIBUTORY NEGLIGENCE.

The doctrine of contributory negligence was another defense against claims for damages for injuries resulting from negligence and, in very many instances, defeated a workman's claim against his employer. It is sometimes stated thus: "A plaintiff can not recover damages if but for his own negligence the accident would not have happened, though there was negligence on the part of the defendant." This was

also recognized by Lord Abinger in Priestly *v.* Fowler (supra), and applied to a master and servant case, when he laid down that "the relation of master and servant can not imply an obligation on the part of the master to take more care of the servant than he may be reasonably expected to do of himself," thereby recognizing that the servant's right to recovery for an accident was conditioned on his showing that he did not contribute to his own injury. (See Labatt, sec. 313.) This defense, however, was available against the claim of a stranger as well as against the claim of a workman upon his employer. It was based upon the idea that if the plaintiff was negligent, his negligence and not that of the defendant was the real or proximate cause of the injury. (Thomas *v.* Quartermaine, supra.)

This doctrine was never accepted as sound in the admiralty courts, where, if both parties were negligent, the loss was divided.

EFFECT OF DEATH UPON PERSONAL ACTIONS.

Another defense that operated to defeat a workman's claim was the rule of the common law that every personal action dies with the person entitled to bring it, or on the death of the person against whom it can be brought (actio personalis moritur cum persona). This rule of the common law, which relieved an employer from responsibility for all injuries causing death, was, however, abrogated by parliamentary enactment in 1846, under the statute commonly called "Lord Campbell's Act." Until that act the representatives of a workman killed by accident had no redress whatever against his employer.

BURDEN OF PROOF ON PLAINTIFF.

A final stumbling block to recovery by an injured workman lay in the fact that at common law in an action for damages for injuries resulting from negligence the burden of proof lies upon the plaintiff. He has to show (1) negligence, namely, a duty and a breach of that duty; and (2) injury as a consequence of that breach. In many cases, therefore, even where a workman had a legal right of recovery he got nothing, as he was unable to prove his case.

Attempted Legislation, 1875 to 1879.

An examination of attempted legislation and legislative enactments shows that bills were introduced in 1875 and 1876 to abolish entirely the doctrine of common employment and the defense of assumed risk. These bills were doubtless introduced because the principles so laid down were being pressed more and more severely against the workmen until the restrictions which were conceivably equitable to apply in the case of the smaller industries of former years were made to apply in the case of more recent and indefinitely extended undertakings. Thus the doctrine of common employment was applied to the slight relationship existing between a miner and the engineer of the mine and between the general manager of a railway and a trackman in the service of the same company, resulting in the master in a large undertaking escaping responsibility by delegating authority. These bills were withdrawn, however, on the undertaking that Lord Beacons-

field, who was the prime minister, should cause an inquiry to be made into the subject by a select committee of Parliament.

This committee was duly appointed, and in 1877 submitted a report.

This report recommended that where a master delegates his duty of selecting proper servants, material, and plant wholly to agents, instead of performing them himself, such persons to whom those duties are delegated should be held to be the "alter ego" of the master, and not to be fellow servants of the injured servant.

During the proceedings of the committee, before the adoption of the report, it had been proposed that the committee recommend that the defense of common employment should be abolished in the case of accident through the negligence of any employee exercising authority, however low in the scale he might be, so long as he was not employed in actual manual labor. This recommendation, however, was rejected in favor of the report above given.

About the same time a report from the royal commission on accidents on railways was brought in, to the effect that the master should be made liable for damages for injuries resulting from the negligence of those to whom the master's authority had been delegated on railways.

The following year, 1878, one of the bills to totally abolish the doctrine of common employment was reintroduced. It, however, was "talked out," and then dropped. The attorney general, however, promised to bring up a bill later. It was then contended that there was no difference between railways and other industries.

In 1879 three bills were introduced, none of which passed. Of these one proposed to abolish the doctrine of common employment and the other two to modify that doctrine. One of the latter was introduced by the Government and was limited in its operation to "railways, mines, factories, and works." It made the employer liable for damages for injuries resulting from the negligence of servants with "managerial" authority; it failed to pass, as there was a dissolution of the Government before it had left committee.

Employers' Liability Act of 1880.

In the following year, 1880, a bill was introduced by Mr. Gladstone's Government, which was finally enacted into law and became known as the "employers' liability act of 1880." At the general election, following the dissolution of Lord Beaconsfield's Government, the abolition of the doctrine of common employment became an election cry. Therefore, at the entry of the next Government Mr. Gladstone said: "The present law is unsatisfactory, and further protection to workmen is necessary," and immediately reintroduced the bill introduced by Lord Brassey in 1879. Mr. Dobson, whose name was on the back of the bill, showed in his statement that "the common law had ended in giving the workmen no compensation at all unless he could trace the accident to personal negligence on the part of his employer." He stated that the bill reverted to the ancient state of the law and would take a middle course, making the employer liable for injuries resulting from the negligence of those to whom he deputed his duties, or from defects in the plant due to negligence of his deputies.

Many amendments, which became interesting from their frequent reappearances in later Parliaments, were introduced. One provided

for a general system of insurance, and though this amendment was negatived the Government said that while they did not deem compulsory insurance practicable, they would consider proposals thereto. Another amendment, which was negatived, allowed a workman to recover, if injured by a fellow servant, "in a separate department." An amendment to extend the benefits of the bill to Her Majesty's arsenals and dockyards was negatived on the ground that they now had greater benefits, although it was said that the Government employees would ultimately be treated the same as others. It was claimed by the opponents of the bill that if passed it would result in the ruin of industries. Mr. Chamberlain strenuously denied this in debate.

When the bill became a law it was restricted to a limit of seven years, but it was subsequently extended, year by year, until the passage of the workmen's compensation act of 1897, and is still in force. It, however, imposed a limit upon the amount of damages (previously unlimited at common law) that could be recovered for an accident, namely, "three years' wages of the injured person, or of a person in the same grade in the same district." This limitation has operated as a hardship upon injured children, since their earnings were usually only a few shillings weekly.

The act being a compromise, was imperfectly drawn, and resulted "in a large crop of litigation."

While in introducing the bill the Government had intended to bring back the law to what it was supposed to be in England before the case of Priestly *v.* Fowler, and in Scotland up to the decision in the Bartonshall Coal Co. *v.* Reed (3 McQ., H. L. Cas., 266), the result of the act was to prima facie entitle the workman to recovery for injuries resulting from the negligent performance of master's duties and powers delegated to superintendents and to other persons. It, therefore, only obliterated the doctrine of common employment, as far as the five causes of injury to a workman mentioned in section 1 of the act was concerned. That doctrine, therefore, remained in force as to accidents from other causes than those mentioned in section 1 of the act, but placed the workman in the same position as if he had been a stranger to his employer, so far as the five causes mentioned in that section were concerned. The five causes mentioned were as follows:

(1) Defective ways, works, machinery, and plant (if due to the negligence of the employer or of the person to whom had been delegated his duty thereabout).

(2) Negligence of a superintendent (if superintendence was his principal duty and he was not ordinarily engaged in manual labor).

(3) Negligence of persons to whom the employer had delegated his power of giving orders.

(4) Acts or omissions in obedience to rules or by-laws or in obedience to instructions of persons authorized by employers to give them.

(5) In the case of railway companies, the negligent management of trains, points, and signals.

The act was also at first thought to have taken away the defense of volenti non fit injuria (see Weblin *v.* Ballard, 17 Q. B. D., 125); however, the later leading case of Thomas *v.* Quartermaine, supra, showed that this defense still survived, although the subsequent case of Smith *v.* Baker (60 L. J. Q. B., 683), in the House of Lords, minimizes its application.

Contracting Out.

After the passage of the employers' liability act of 1880 it was found that employers were, by special contracts with their men, freeing themselves from the liability imposed by that act, and the case of Griffiths *v.* Earl Dudley (9 Q. B. D., 357) decided that such contracts were "not contrary to public policy." Therefore, in 1881, a bill was introduced to prevent an employer from contracting himself out of the act. The bill failed, and in the following years, 1882 and 1883, similar bills again failed. It was stated that "it was inexpedient to interfere with freedom of contract and with private schemes that made provision for every accident, whether under the employers' liability act or not." In 1886 a similar bill contained a further clause that the definition of a person intrusted with superintendence was not thereafter to be limited to "one who is not ordinarily engaged in manual labor and whose principal duty is that of superintendence." The bill was dropped on the appointment of a select committee to inquire into the workings of the act of 1880.

The committee's recommendations were as follows:

(1) The repeal of the "limiting definition" of a superintendent.

(2) That no contracting out should be allowed, unless for adequate consideration (namely, a contribution to insurance approved by outside authority and guaranteed against deficiency by the employer).

In 1887–88 a bill was introduced by a labor member practically abrogating the doctrine of common employment, and while not affecting existing "contracts out," providing that in future there should be none, but that the "court in any suit" should "reduce the damage" if it was found the plaintiff had received benefits from insurance funds. The bill was dropped on the Government itself introducing a bill on the lines of the select committee's recommendations. That bill was emasculated in committee, and thereafter dropped on opposition by labor members, who insisted on abolishing the defense of common employment and contracting out.

In 1890 another bill was introduced by a labor member abolishing common employment as a defense, and repealing the act of 1880. But the Government again reintroduced its bill, allowing contracting out only when "a written request was made by a workman," and even then allowing the court, in any subsequent suit, to pass on the question of the adequacy of consideration received by him for so doing, and to see that it was a substantial one, other than "continuance in service."

The following year a labor member introduced a bill, which did not pass, entirely prohibiting contracting out, and actually invalidating all such existing contracts.

It will, therefore, be seen that the Government was on the horns of a dilemma:

On the one hand, it was shown that from the workmen's standpoint there seemed to be no equitable reason for the distinction of the existing law between accidents, the result of negligence, traced to a superior servant, and accidents traced to an inferior servant, the neglect of one being as liable to cause an accident as the neglect of the other, or for the law treating workmen less liberally than strangers, even where the accident was caused by an inferior servant. Again, if a distinction were maintained making "mere authority" on the part

of the offending servant the test, it would still be unjust and would practically amount to no distinction at all. The elimination, therefore, of the distinction by abolition of the doctrine of common employment was put forward as one remedy.

On the other hand, the only other remedy would have been to change the general law by taking away from the master his liability to anyone, to a stranger as well as to a servant, for his servant's acts. This would have caused altogether too great an upheaval of general legal relations, and probably could not have been enacted, owing to opposition not only by the workmen interest but also by the public interest.

The difficulties that confronted the Government, if they permitted contracting out, were:

(1) Examination of adequacy of contracting-out schemes beforehand would necessitate a Government department.

(2) To allow the adequacy of contracting-out schemes to be passed on by a court in suits would take from the employers "the prevention of suit feature," their chief incentive to contract out.

The Government found, on inquiring into how far contracting out had been carried, since the act of 1880, that as regards mines, a very large number did contract out, and desired to; in railways contracting out was general; in the building trades, the iron trades, and other trades, there was generally no contracting out.

Among the reasons advanced for prohibiting contracting out were:

(1) That the act tends to safety through exposing negligent employers in court. But the Government found the number of cases in court were insignificant, and from such statistics as were available concluded that the claim was not borne out.

(2) That if allowed to contract out, workmen will be coerced to contract out for no consideration. The Government found practically no such cases, and also found that employers' contributions to benefit societies under contracting-out schemes exceeded vastly the amount payable under the act.

The contracting-out schemes covered all accidents, both those for which the master could be held liable and those for which the master could not be held liable. They seemed to work advantageously to both parties, the workmen getting larger pecuniary benefits for every accident, and also having an incentive to insure, while the master was freed from suit and was placed on better terms with his men. Therefore it was felt that an absolute prohibition of contracting out would be disadvantageous to both parties.

Attitude of Political Economists.

The Government had before it, on the one hand, the view of lawyers, employers, and workmen, who argued as if there was then practically no indemnity recoverable for accident, and further that abolishing the doctrine of common employment would give such an indemnity, but that contracting out, if allowed, would take it away again.

On the other hand was the view, from the political-economy standpoint, which admitted that industry ought to bear the cost of all accidents (as risks as well as labor should be paid for), but maintained

that it actually did so, in whatever state of the law, in a fractional reduction of the current rate of wages which the employer took from the men and ultimately paid back to them in occasional damages recovered against him for accidents. Political economy was not, therefore, concerned with such changes, since, if the law were made more drastic by abolishing common employment, a slightly larger amount would be retained by the employer from the wages, and if contracting out were permitted again a less amount would be retained by him.

The political economists' view was, therefore, that there was no sound economic reason for making distinctions between accidents which were the result of negligence and pure accidents; that all accidents might be properly compensated; that it merely made the employer an insurer, who took the premiums from the wages in a greater or less degree, and that it was only a political and not an economic question.

The Asquith Bill.

In 1893, the Liberal Government, then in power, through the Home Secretary, Mr. Asquith, introduced a bill to amend the existing employers' liability law. This bill provided for the repeal of the act of 1880 and for the abolition of the doctrine of common employment entirely and the limit of damages recoverable; it prohibited contracting out entirely. Though it did not take away the defense of contributory negligence and acquiescence (volenti non fit injuria), it left the servant in the same position as a stranger, thus practically going to the limit of previous contemplated legislation.

At once, on the introduction of this bill, Mr. Chamberlain, who was a member of the opposition (the Conservative Party), introduced an amendment to the effect that no change of the law "will be final or satisfactory which does not provide compensation for all injuries in the ordinary course of employment not caused by injured's own act or default." The departure eliminated the question of whether the master was negligent or not.

The attitude toward industrial accidents as expressed in this amendment had for some time past found expression in legislation in Germany and Austria, as well as in other European countries. There the basis of recovery for accidents had been changed from that of the general common law of negligence to the principle that "workmen should receive certain compensation, but limited in amount, for all accidents of industry," irrespective of whether negligence attributable to the master caused them or not; contracting out was prohibited. In one country (Germany), as a machinery for carrying this out, a general system of insurance had been adopted, the industries of equal degree of danger being formed into mutual insurance guilds.

A second bill was therefore introduced by private members making the employer liable to pay "compensation for all injuries due to employment," excepting the willful default of the injured workman, placing limits on such compensation, however, and providing that it should take the form of purchase of annuities from the post office of the amounts specified in the schedule of the bill. This bill was only tentative, and was withdrawn, as was Mr. Chamberlain's amendment to the Asquith bill.

PRINCIPLE OF THE BILL.

Mr. Asquith, in debate of the Government bill, said the principle of it was exactly similar to the act of 1880, namely, that "if a man, for his own profit, sets on foot industrial operations, he ought to be made responsible for the selection of his servants and the supervision of his business, so as to reduce the risks to the smallest possible number," and that this bill would diminish the area of accidents. The opposition pointed out that masters could not control the acts of the fellow servants.

After lengthy debate throughout the session and the introduction of a new clause dealing with employments injurious to health, the Government bill passed the House of Commons.

In the House of Lords an amendment, passed by 148 votes to 28 (known as the Dudley amendment), permitted the continuance of existing contracts out, if subsequently approved by a two-thirds vote of the men, and future contracts out on the granting of a certificate by the board of trade "that the scheme compensates all cases of injury, that the employer contributes at least one-fourth, and that an actuary certifies that contributions are proportionate to the liabilities of the fund."

On the House of Lords refusing to eliminate their amendment and concede the unrestricted prohibition of contracting out, on the ground that the workmen were opposed to the prohibition and that it would minimize the prevention of accident feature of the bill, the House of Commons rejected the amendment and threw up the whole bill.

It will be seen that the attitude in England toward the subject of industrial accidents and the law in force there at the time of the failure of the Asquith bill, corresponded very closely to the attitude toward the subject and to the laws in force in the United States to-day, with the exception that verdicts higher in amount are rendered here by juries. The law in England then was the common law of negligence, subject to the defenses of contributory negligence, assumption of risk, and fellow-servant negligence, as modified by the employers' liability act of 1880. The legislation attempted indicated clearly the tendency of public opinion toward trade compensation for accident irrespective of negligence. In the United States the existing law is the same common law of negligence, subject to the same defenses of contributory negligence, assumption of risk, and fellow-servant negligence, as modified in some States by similar employers' liability acts, and in others by a more limited interpretation of the defense of fellow-servant negligence. In the United States, as then in England, in certain States (as in Massachusetts) there have been suggested changes to laws of compensation irrespective of negligence.

WORKMEN'S COMPENSATION ACT OF 1897.

Arguments Advanced When the British Workmen's Compensation Acts Were Adopted.

PRINCIPLE OF THE BILL.

The next serious attempt to deal with the subject of accidents to workmen was the introduction by the Conservative Government of a bill which became the workmen's compensation act of 1897. The Government in introducing the bill said: "The present law is notoriously inadequate; it fails to compensate for accidents if caused by fellow servants, if contributed to by the injured, and if resulting from the risks of occupation; it causes costly litigation, 35 per cent of the amount recovered being legal expenses; it leaves the employer ignorant of what his liability is."

The Home Secretary said that the Asquith bill had attempted the prevention of accidents by making the master responsible for accidents from the negligence of fellow workmen, as well as from his own, and without limiting the amount of damage, putting the workmen in the same position as strangers; that such legislation rendered proof of negligence necessary, which meant increased litigation, and such a law would still reach only 50 per cent of the accidents that happened.

The Government held that giving a right of action for injuries resulting from negligence could not adequately meet the serious results of accidents to workmen, that they should be put in a better position toward their employers than a stranger and be given a certain but limited compensation for all accidents, not at the expense of taxes or public charity, and that this would tend to prevent accident, though the true method of prevention was by criminal statutes.

The Government said the purpose of their bill was to define and limit the liability and devise a simple and inexpensive method of settling doubtful questions. That the principle was new, based on the doctrine that "When a person on his own responsibility and for his own profit sets in motion agencies which create risks for others, he ought to be civilly responsible for the consequences," but in applying this and granting compensation it was the general opinion that a limit of liability should be adopted with it.

The opposition (Mr. Asquith) admitted the principle of universal compensation and of giving "some solatium for a pure accident, the result of no negligence, to soldiers in the army of industry." He said it was revolting to sentiment and judgment that "men who met with accidents through the necessary exigencies of daily occupation should be a charge upon their own families," and though the bill created a new legal right, so did the poor law, which recognized everyone's right to State food and shelter. He, however, criticized the bill as drawn.

ARGUMENTS FOR AND AGAINST THE BILL.

The following are the leading arguments, pro and con, of the extended debates that followed, grouped under their respective heads, and referred to the different provisions of the bill.

By its opponents the bill was called "a radical revolution" and "a plunge into socialism." It was said to exceed the proper function of government, which was the protection of property and liberty, transferring the burden of accidents from one set of people to another; it was said to put legal responsibility where no moral responsibility existed, and to be contrary to the tenets of the Conservative Party introducing it.

This was answered by Mr. Chamberlain, the author of the bill, who admitted that it was a new principle, only applicable if a "great public human interest is involved," but said that the bill dealt with "a great scandal"; not with absolute rights, but with questions of humanity and expediency. He stated that it contained two principles as follows:

(1) That a workman was entitled for all accidents of occupation to a moderate and reasonable compensation.

(2) That the compensation should be a charge on the trade, like repair of machinery.

He said, moreover, that the bill distinguished between an employer's moral negligence (employer's willful or wrongful act) and an employer's technical negligence (his foreman causing an accident) and an employer's criminal negligence (employer's neglect of precaution after warning).

Mr. Balfour (afterwards prime minister) said that the bill was consistent with previous legislation, the country felt it desirable to "diffuse the shock" of accidents, and had already granted such a relief to the public, and it should be granted to a workman in his vocation. He answered the objection that it put a legal where no moral responsibility existed by showing that the law already did that, as it made a railroad responsible for an injury to a passenger, even where caused by the mistake of a good engineer.

Lord Salisbury (the prime minister) said that the existing law was socialistic and not the bill, since the existing law made the taxpayer through the poor law pay for a railroad engineer killed by an outsider obstructing the track, and so transferring the burden to the industry itself (the railroad) was less socialistic.

He said that there was a proper distinction between State interference when saving life as against saving property; that in no well-regulated State was mere liberty allowed to endanger lives; that it was the supreme duty of the State to see that the claims of property must bow to the interest of citizens represented by safety, life, and limb. He added that the bill was part of the series of old factory legislation preventing disease and death. He said the history of the law of compensation was a history of a great machinery for saving life.

The following objections to the bill and answers to these objections were also made:

(1) That it was unfair, as it made the employer liable for acts of strangers, and as a social experiment, if it was expedient for the country, the country should pay for it; but it was answered that it

was "fair, moral, and right"; that those for whose emoluments the trade was carried on should pay; that as the employer risked only his capital, but the workman his life, he had a right to compensation when injured at his employment; that wear and tear should be borne by the industry; that a maximum of one-half wages lost was fair.

(2) That the German system was better, as under it trade responsibility existed, as opposed to individual responsibility under the bill, and that the State should insure or assume the pensions; but Mr. Chamberlain answered that the German system was too elaborate and was impossible for English people, and that State insurance was a gigantic question.

(3) That it would cause social strife, as it was alleged the German law had done; but its advocates maintained that it would insure social peace and diminish litigation, as they alleged the German law had done.

(4) That the trades unions and friendly societies would suffer through it; but this was denied by the labor union members.

(5) That it would take away self-reliance and thrift from the workman; but it was said that individualistic theories about the rights and habits of grown men had become obsolete.

(6) That it would reduce wages; but this was not admitted.

(7) That it would increase accidents, as it was alleged the German law had done; but this was denied.

(8) That it would injure old men, as employers would not employ them; but (though the Government was willing to limit the provisions of the bill to men under 60 years) this was strenuously denied by the representatives of labor, who said older men were more careful.

(9) That it was illogical, as it excluded health. The Government admitted this, but said that health was too large a question to tack onto it.

(10) That it would injure trade, especially export trade, and that the bill taxed industry; but it was answered that the employers' liability act of 1880 had been said to impose "terrible liabilities on trade," which experience had shown to be unsound.

Mr. Chamberlain said the Asquith bill was a punishment bill covering 10 per cent of accidents and this bill was a benefit bill covering 80 per cent of accidents.

Other members admitted it would relieve poverty, distress, and ruin to thousands of workmen through accidents.

Mr. Ruegg, a leading English commentator on this subject, states the principle of the bill to be that "the pecuniary results from loss of life and injury incident to the carrying on of industrial enterprise" should be regarded as "a part of the expense of production;" that the employer who initiates it should, for convenience sake, pay this expense in the first instance, and that "ultimately it will be paid by the community" for whose use and enjoyment industry is carried on.

SCOPE OF THE BILL.

The act of 1897 is limited in its application to employment on or in or about a railway, factory, mine, quarry, or engineering work, and a building which exceeds 30 feet in height being constructed or repaired by means of a scaffolding, or being demolished, or on which

machinery driven by power is being used for those purposes. (Sec. 7 (1).) The act of 1900 added agriculture.

The scope of the act of 1897 was criticised generally as being too exclusive and covering only selected industries; as failing to cover large classes of workmen, such as seamen, agricultural laborers, employees in workshops (factories without mechanical power), and other small employers' work people; as only partially covering building employees; as failing to cover the first two weeks' disability from accident; as failing to cover injuries to health; and as covering trades like coal mining, which would be ruined by the bill.

Generally, the Government said that the bill was a tentative measure, and as it involved a new principle it was limited to the more dangerous industries, i. e., to those which had the most accidents; that it covered 6,000,000 work people (leaving 7,000,000 unprotected), but it had covered 60 or 70 per cent of all accidents; that the two exceptions to liability were serious and willful misconduct on the part of the injured employee (sec. 1 (2) (c)) and the exemption of employers from liability for the first two weeks of accidents (sec. 1 (2) (a)), which would foster benefit societies and knock off 25 per cent of accidents (which were trivial) and 30 per cent of the compensation payable; that injury to health was too large a question to add to this.

In discussion, Mr. Balfour indicated that a reason for omitting small employers and selecting the great organized trades was to obviate what would be merely transferring the "shock of accident" from one individual to another, the shock being diffused if applied to the great organized trades. It was admitted that when experience had proved there was no injury to the trades covered, such experience would be an unanswerable argument in favor of the extension of the scope of the bill.

In debate it was said that there were three tests of the scope: (1) Risk, (2) capital in industry, (3) insurance feasibility.

SEAMEN.

The arguments against inclusion of seamen, presented by Mr. Chamberlain, were that shipping was a great industry of "special circumstanes," and therefore separate legislation was necessary; that the great steamship lines were different from the merchant service; that the inclusion of seamen under the bill would breed opposition; that already injured sailors were paid their wages and medical attention according to special laws. It was said that deaths on sailing vessels were 50 to 1 of deaths on steamers; that it would kill the sailing-vessel industry and the fishing business to include them; that the owner had no control over accidents at sea. Several owners in big steamship lines recommended inclusion, and Mr. Havelock Wilson (who had fought to have the act of 1880 applied to sailors, but failed) pointed out, as to payment of wages when a seaman was injured, that there was no loss to the owner, as the other sailors did the injured sailor's work; that shipowners paid no poor-rate tax, and therefore "landsmen paid for injured sailors;" that there was no medical attention supplied, except in the big liners; that the trade was a most dangerous one.

WORKSHOPS.

It was urged that women and children were employed in workshops, that there were no "compassionate allowances" in workshops; and that the tendency of modern legislation was to unite workshop and factory; but it was answered that they were not dangerous, the proportion being only 2 deaths in workshops to 188 in factories.

BUILDINGS.

The Government refused to eliminate the restriction and cover buildings under 30 feet in height, saying that the inclusion of buildings was a compromise, and that 30 feet was an arbitrary line, based on the factory act.

GOVERNMENT EMPLOYEES.

Persons in the naval and military service of the Crown were excluded (sec. 8); otherwise Government employees were covered.

MALINGERING.

It had been claimed by the opponents of the bill that the German law had increased malingering on the part of injured workmen, and that this bill would have the same effect, but the Government felt that these provisions for medical examination would prevent it, and, further, that cooperative schemes formed under the contracting-out clause, as they would be controlled by workmen, would also prevent it.

ACTS OF STRANGERS.

In reply to the criticism that the bill was unjust in making an employer responsible for injuries to his men caused by acts of strangers, the answer was made that all employers with their fellowmen in their power through industry should "be forced to make them safe." The Government said if the employer was not made liable it would necessitate the inquiry, "Who caused the accident?" and result in litigation, defeating the object of the bill, which was to compensate without inquiry. With a view to this principle, and chiefly to include under it subcontractors' workmen (sec. 4) as employees of the chief employer, so enabling them to get their benefits, section 7 (1) provides that "the act shall apply only to employment by the undertakers," though in all cases except those in section 4, the injured's own employer is the undertaker (sec. 7); (2) defining the undertaker as "the company" in a railway, "the occupier" in a factory, quarry, or laundry, "the owner" in a mine, "the person undertaking the construction, etc.," in engineering work and in building. Section 4, however, gives the undertaker a right of indemnity against the subcontractor.

COAL MINING.

It was urged that 80 to 90 per cent of the coal in Northumberland competed with foreign coal, and that, therefore, employers could not transfer the burden to the foreign consumer; that any raise in

the price would destroy the glass trade and injure the steel trade; that the bill would shut down a number of coal mines. The Government answered that foreign competitors had compensation laws.

AGRICULTURAL LABORERS.

It was urged that agricultural laborers should be covered, as accidents occurred from agricultural machinery, and their poor wages did not enable them to insure; that they presented the most pathetic figure in the social system—a life of unremitting toil, followed by the poorhouse in old age. The Government in 1897, said the bill was only tentative, and agriculture was not a dangerous trade. They did, however, by a separate bill in 1900, include agriculture, which covers horticulture, forestry, husbandry, inclusive of keeping live stock, poultry, or bees, and the growth of fruit or vegetables.

PREVENTION OF ACCIDENTS.

The Asquith bill had been put forward as effecting the prevention of accidents, and his party urged that this bill would not prevent accidents; that the criminal law was ineffectual to prevent them; that there was nothing incompatible in granting universal compensation, and at the same time providing special liabilities for preventable accidents; that the German system provided compensation with prevention under its danger schedule; that in Germany the trades had a remedy against a negligent employer; that under this bill there would be insurance, and that insurance deprived the master of incentive to care.

It was answered that the Asquith bill only made the master responsible in a greater number of accidents than the preexisting law, and that the master could not prevent the accidents caused by fellow servants, by which only that bill increased his responsibility; that this bill covered a still greater number of accidents than the Asquith bill, and so was more powerful than it to prevent accidents; that increased responsibility meant increased care; that the employers' financial responsibility was a greater preventive than State financial responsibility; that the true method of prevention was by criminal enactment, by factory and workshop acts, and other health and safety acts, and that section 1 (5) of the bill made special reference to the fines applied for the benefit of the injured workmen, and provided that the act should in no way restrict proceedings for such fines. In regard to insurance, it was stated that employers had always been able to insure; that want of care would affect employers' pockets, as insurance companies would differentiate rates; that they saw to it that machines were well guarded; that it was cheaper, however, not to insure at all, which was feasible now that compensation was definite and limited.

BURDEN IMPOSED BY BILL.

On the question as to where the burden imposed by the bill would and should fall, Mr. Asquith said that in trades with foreign competition it could not be transferred to the consumer, but that it would fall on the employer and workman, with consequent injury

to the small employer. To prevent the latter happening and to insure the workman getting his benefits, he advocated placing it on the trade as a whole, as in Germany, and, to prevent injury to the trades with foreign competition, he suggested placing the burden of the bill on the community as a whole. He admitted it would not be crushing to industries generally, and that it would be perfectly fair even if the burden fell on wages.

Other members said that small employer was being crushed out of existence and advocated some Government scheme of insurance, as well for small employers as for trades with foreign competition, like the coal trade, which would be ruined, because they could not stand the burden. The foreigners now (though they already had accident-compensation laws) were winning in competition. They also said that mine owners would run the risk themselves of bankruptcy through a mine disaster, since rates of insurance would be so heavy to cover them. It was no help to a mine owner with an explosion costing £80,000 ($389,320) on his hands to be told that the average cost was 1 per cent.

Mr. Chamberlain answered that the cost fell ultimately on the consumer; that it would not be a burden on wages, but would become a part of charges, which in foreign countries were called trade charges as much as fire insurance, and an addition to the cost of raw material; that the price of wages was settled by the supply of labor and not by these charges unless it could be shown that every business charge became a charge on wages; that wages in Germany had advanced. He characterized the cry of ruining trades as ridiculous and said that generous employers already made similar contributions, and they were glad their competitors were to be brought up to their level.

The attorney general said the main criticism, "that the cost would be 2d. (4 cents) a ton on coal," meant that the cost would only be 10 to 20 per cent more than the Asquith bill and that catastrophes, like explosions, were not arguable; that the bill covered everyday accidents.

Mr. Broadhurst, who had taken a keen interest in labor matters as a member for 20 years, said that a great principle had been established by the bill; but there was "no answer to where the burden would fall." Sir Edward Clark said the burden would fall first on the employer; second, on the consumer; and, third, on wages, which was fair. It was believed that it would only fall on wages when the bottom price in foreign markets had been reached.

It was pointed out that the income tax showed an industrial profit of £336,000,000 ($1,635,144,000), so that industry could well bear the bill; that the fears of coal owners in 1860, 1872, and 1877 had not been borne out by subsequent facts; that the bill, in reality, was not a serious burden, as improving the conditions of labor by shortening hours, etc., always benefited a trade; that the charitable donations of employers, who voluntarily did as much now, would be saved.

COST OF THE BILL.

The cost of the bill to the trades involved was urged as the strongest argument against it. Mr. Chamberlain believed that on the basis of the Government experience, 1 per cent on the wages in coal mining would cover the cost, and one-fourth of 1 per cent in factories, less the

cost of present charitable payments, and the cost of the employers' liability act of 1880 and that in textile trades, one-twentieth to one-tenth of 1 per cent would be sufficient.

Other estimates advanced showed that the existing English law cost one-eighth to one-fourth of 1 per cent, while for the Asquith bill the cost would have been one-half of 1 per cent and that the cost would be three-fourths of 1 per cent if this bill passed.

One member, an employer in a large engineering firm, said that examination of his experience for 10 years past showed that the result of the bill would be one-eighth of 1 per cent on his wages, and another member, the head of another large engineering firm (also manufacturing iron and steel), reached precisely the same result. Still another member gave figures of one-third of 1 per cent for a trade involving 15,000 men.

COAL.

On the figures of the Cheshire Miners' Protective Relief Fund the result of practically 1 per cent of wages on coal was reached; but other estimates varied from two-thirds pence (1.35 cents) a ton (Prof. Merivale, Newcastle) to as high as 3d. (6 cents) a ton (Sir William Lewis, South Wales) and from 1 per cent on wages (Government) to 4¼ per cent on wages (Mr. Neison), and it was said that 2d. (4 cents) a ton would ruin the trade. The Government answered that Germany now paid 2 per cent, and Lord Salisbury pointed out that freights varied from 5s. 11d. to 8s. 3d. ($1.44 to $2.01) a ton, so that 2d. (4 cents) a ton would be insignificant and only the equivalent of carrying 4 miles farther, as freight cost one-half pence (1 cent) a ton.

BANKRUPTCY OF EMPLOYER.

Bankruptcy of the employer might be caused by a disastrous accident or might arise in the ordinary course of business. In the first event the workman would lose his benefits and in the latter any annuity he was receiving.

To deal with the difficulty of bankruptcy of the employer, remedies were urged (1) making the whole particular trade responsible for accidents affecting each individual employer by compulsory masters' combination, like the German system; (2) adopting compulsory insurance; or, (3) inaugurating State insurance. It was answered that, though a hardship, the workman must take his chance; that bankruptcy was just as likely through an action for damages for injuries resulting from negligence as through this bill.

An amendment to allow the substitution of an approved insurance for the liability under the bill was negatived, as the Government could not undertake to certify the solvency of insurace companies.

To deal with the difficulty of losing annuities, the payment of lump sums instead of annuities was urged, it being pointed out that those sums could then be invested to produce an annuity.

The Government later accepted amendments to make the undertaker liable to subcontractors' men (sec. 4) and giving workmen a lien on any insurance the master had if the master became insolvent (sec. 5), but refused an amendment to make him a preferential creditor on the insolvent master's total assets.

CHOICE OF REMEDIES AND LIABILITY OF EMPLOYER.

The bill left a choice of remedies to the workmen—i. e., of claiming at his option under the bill or suing under the common law or under the employers' liability act of 1880—but did not leave the employer liable to pay compensation both independently of and under the act. (Sec. 1 (2) (*b*).)

It was the intention in passing the bill to restrict the workmen's rights at common law and under the employers' liability act of 1880 somewhat in inserting the words "personal" and "willful" (personal negligence or willful act of the employer or of some person for whose act or default the employer is responsible). Mr. Asquith moved to omit those words and leave the old rights intact, but Mr. Chamberlain, who had said the bill distinguished between "moral, technical, and criminal" negligence, refused to sanction the omission, saying the old remedies were only left for cases of moral negligence and liability—i. e., where there was deliberate and peculiar negligence corresponding to the serious and willful misconduct which defeated the claim of the workman. However, the words have not limited the previous rights to any extent. Mr. Ruegg, who discusses the point in his treatise, says: "None of the workmen's rights, either under the employers' liability act of 1880 or at common law, are taken away by the workmen's compensation act." As the act of 1880 also limited the compensation recoverable for death or disablement to three years' wages, Mr. Haldane said: "There would be no incentive to sue under it," and an amendment taking away the existing rights under that act and the common law, but also taking away the limits of compensation under the bill, was lost by only 24 votes.

If a workman sued independently of the bill and lost his suit, section 1 (4) provided that he should not thereby lose his compensation under the bill, but the court should then and there on his request assess it, deducting the costs of suit therefrom, if justifiable, and give a certificate of it, which should be the equivalent of an award under the act. If he proceeded under the bill and failed through any technicality he could not, however, subsequently sue.

If a stranger was liable for the accident, section 6 gave the workman the option of suing the stranger or of proceeding under the act, and, if he chose the latter course, gave the employer a remedy against the stranger for indemnity.

DEFENSES OF FELLOW-SERVANT NEGLIGENCE AND ASSUMPTION OF RISK.

Amendments to the bill were introduced to eliminate the defenses of fellow-servant negligence and assumption of risk. It was urged that these defenses still applied in the trades not covered by the bill if suit were brought independently of the bill, and also in the small injuries of less than two weeks' duration excluded by the bill. Mr. Chamberlain pointed out that the amendment would necessarily be limited in effect to the trades within the bill and that, so far as those trades were covered, the bill practically obliterated those doctrines and in no way defended them; that only a small part of the trivial injuries were traceable to the negligence of fellow servants. The amendments were lost.

DEFENSE OF CONTRIBUTORY NEGLIGENCE.

The question of eliminating the defense of contributory negligence was a difficult one. Mr. Chamberlain said that, morally, cases caused by the injured's own negligence should not be compensated, but as a matter of expediency, to avoid litigation, they should be.

The Government, however, later approved and passed an amendment to exclude payment for injury to a workman if it was the result of his "serious and willful misconduct" (sec. 1 (2) (*c*)). Mr. Chamberlain said the wording of the clause destroyed the old doctrine of contributory negligence; but it was unfair to penalize the employer where grossly negligent and not the employee also, and it would tend to prevent accident.

Even this amendment was urged to be contrary to the principle of the bill and it was feared would open inquiry into the cause of accidents and so promote fictitious defenses and litigation in an attempt to provide for cases necessarily rare, and it was said that the real beneficiaries, i. e., the family of the negligent employee, were innocent even if he was negligent.

Amendments were then introduced to define serious and willful misconduct but were negatived as being a question for the arbitrator in each case. Lord Salisbury, however, said that any breach of rules justifying fine or imprisonment would bar compensation.

ARBITRATION AND LITIGATION.

In furtherance of the Government's purpose to get rid of litigation about accidents of employment and the friction and expense involved and to devise a simple and inexpensive method of settling doubtful questions, the bill provided (sec. 1 (3)) that on a dispute arising (and then only) it must be settled by arbitration, and the decision of the arbitrator be registered as a judgment, in the way provided in the second schedule (1), (2), (3), namely:

First. By a committee formed by the workmen and their employer for the purpose. This committee might settle the matter or refer it to a single arbitrator.

The Government said the workmen would predominate on the committee or refuse to form a committee.

Second. If there be no committee, or if the committee is objected to by either party before it meets, or if the committee fails to settle the matter or refers it, by a single arbitrator agreed on by the parties.

Third. In the absence of agreement on an arbitrator, then by the county court judge of the district sitting as an arbitrator without fees.

Fourth. If the county court judge is unable to act, then by an arbitrator appointed by him (paid by the State).

APPEALS.

The right of appeal was limited to reduce litigation. There was no appeal from the arbitrator on questions of fact, but he might, if he saw fit, submit questions of law to the county court judge (second schedule (4)), whose decision was final, unless either party appealed direct to the court of appeal. At first appeal was not contemplated, but the appeal on the law to the court of appeal was admitted as

necessary to reduce the numerous county court decisions to authoritative general principles. It was then intended that such appeal should be final, but though no appeal to the House of Lords lies for Scotch and Irish cases, it has been decided that it does for English cases.

COSTS.

The payment of the cost of arbitration by the State was urged, but the Government said so doing would promote litigation. Second schedule (6) therefore leaves the costs to the discretion of the arbitrator, but limits them to the ordinary county court costs, none to be paid prior to the award. (Second schedule (11).)

REGISTRATION.

Second schedule (8) provides that all agreements and decisions by committees or arbitrators shall be recorded by the registrars of county courts as judgments.

LAWYERS.

Lawyers were entirely barred from the proceedings at first, but before the passage of the bill the clause barring them was eliminated on the recommendation of the attorney general, as otherwise the conduct of them would fall into the hands of advisers of a low type. Mr. Chamberlain said he had changed his mind on the point and approved the change, as their fees were restricted, and a clause (second schedule (12)) was inserted controlling their fees, in the discretion of the arbitrator and by the court taxing scale. Any party could appear in person as advocate, instead of lawyers, and appearance was also permitted, on leave of arbitrator, to others, including trades-union secretaries, etc., but without any right to fees.

DOCTORS.

The estimate of the disability sustained being one of the most important questions of the bill, it was provided (first schedule (3)) that a workman, on giving notice of accident, must submit himself for examination by the employer's doctor, and on refusal to do so his benefits were to be suspended. During disability he must again submit himself for examination, if required, with the option, however, if he objected to the doctor or his certificate, of submitting himself to examination by one of the doctors appointed by the secretary of state (first schedule (11)), the certificate of the doctor appointed by the secretary of state to be final, and his fees to be paid by the state, as also those of other doctors appointed under the same authority "to report on any matter arising in the arbitration." (Second schedule (13).)

Against this whole system of arbitration it was urged in debate that arbitration was really the equivalent of litigation, and that in the previous year in Germany there had been 38,000 appeals from associations of employers and 12,000 appeals to Berlin, but the Government felt that the bulk of accidents would not need to be arbitrated and that the arbitration machinery was simple and would save expense.

COMPENSATION PAYABLE.

The benefits or amount of compensation under the act were based on the wages earned by the injured. It was pointed out in debate that this worked a hardship on children permanently injured, as their wages are small.

It was suggested that, if based on the wages at the time of the accident, that might prove too little or too much, so the average weekly wage was fixed upon as a basis. For the three years' death benefit, if deceased had not been under the same employer for three years, "156 times his average weekly earnings during the period of his actual employment under the same employer" was fixed by the first schedule (1) (*a*), and for the incapacity benefit, the average weekly wages over 12 months or such less period as he had been employed by the same employer, was fixed as a basis by the first schedule (1) (*b*).

DEATH BENEFITS.

Where the deceased leaves persons wholly dependent, the first schedule (1) (*a*) (i) provides a compensation equal to three years' earnings, but not less than £150 ($729.98) nor more than £300 ($1,459.95).

Where the deceased leaves persons partially dependent, first schedule (1) (*a*) (ii) provides a compensation of what may be agreed on or determined by arbitration as reasonable and proportionate to the injury to the dependents, but not more than three years' earnings nor £300 ($1,459.95).

Where deceased leaves no dependents, first schedule (1) (*a*) (iii) provides reasonable medical and burial expenses up to £10 ($48.67).

An amendment to make the death benefits equal, whether there were any dependents or not, on the ground that inequality would injure married men and prevent their employment, was lost, Mr. Chamberlain pointing out that the friendly societies had the same distinctions without that result.

The dependents were limited (sec. 7 (2) (*a*)) to the persons mentioned in the fatal accidents act, 1846, i. e., to wife, husband, parents, and children (an amendment to add brother and sister having been negatived, as the Government would not extend the scope); and questions as to dependency and amounts payable therefor to be arbitrated in default of agreement. (First schedule (5).)

The minimum sum being omitted from the first schedule (1) (*a*) (ii), dealing with partial dependents, compensation to parents for the death of a child who contributed to the family fund could be properly restricted to the pecuniary loss occasioned, and be fixed by the arbitrator or otherwise at a proper proportionate sum instead of allowing the family to gain by the death. The same rule applied to amounts payable to other partial dependents, the attorney general saying that they got nothing unless they suffered pecuniary loss through the death.

INCAPACITY BENEFITS.

For injuries causing incapacity, temporary or permanent, and total or partial incapacity, the first schedule (1) (*b*) provides for a compensation, after the second week, up to a limit of £1 ($4.87) a week, of

not exceeding 50 per cent of injured's average previous weekly earnings.

In fixing the amount of compensation actually payable within those limits (which is done by agreement or arbitration), clause 2 provides that regard should be had to the difference between his earnings before and his ability to earn after the accident.

LUMP-SUM PAYMENTS.

Before adopting the above benefits there was much discussion in debate as to the merits of adopting lump-sum and weekly payments, respectively, as the benefits under the bill.

By those advocating lump-sum payments it was said that the benefits under continued weekly payments would aggregate more than the benefits for death; that payment of a lump sum would be better for a man; that investments of lump sums were possible which would prevent loss of benefit through the employer becoming insolvent; that the continuance of weekly payments during incapacity would be hard on employers; that lump sums would facilitate the employer obtaining insurance.

Amendments were introduced but lost, making the benefits of the bill for death and permanent injuries lump-sum payments, like an ordinary accident-insurance policy, namely, a definite sum down, three years' wages for death or permanent total disablement, and six months' wages for permanent partial disablement.

It was pointed out that payments of lump sums to widows, dependents, and persons unaccustomed to manage money would result in loss and its being quickly squandered, thus defeating the object of the bill. Mr. John Burns strongly advocated weekly payments in lieu of lump sums. Other members said lump sums would bankrupt and ruin employers.

Mr. Chamberlain said that the permanent incapacity weekly benefit might be hard on an employer if he had no insurance, but if he had insurance it would be trivial; that the limits enabled insurance to be got. He said that disability payments should be more than the death payments, as beneficiaries got the latter.

The views as to lump sums and weekly payments were compromised as follows:

First. By giving authority to the arbitrator in his discretion to invest the lump sums awarded (see first schedule (6) to (10))—i. e., by agreement or by order of arbitrator a dependent's compensation may be either invested or not. If invested, to be either by way of deposit in or purchase of annuity through the post office savings bank, subsequently to be drawn out only on written order of the treasury or county court judge, and,

Second. By providing for liberty to commute the weekly benefits payable.

COMMUTATION OF BENEFITS.

Mr. Chamberlain introduced a clause allowing a commutation of future weekly benefits to be agreed upon after weekly benefits had been paid for 12 months, either at the request of the workmen or at the request of the employer, limiting such commutation amount, however, to three years' full wages.

Strong argument was introduced against this proposal, pointing out that commutation reduced benefits under the bill, and Mr. John Burns said it would after seven years "relegate the injured people to charity."

For the clause arguments were advanced that, as the indefinite continuation of weekly payment was defined by commutation, insurance would be cheaper; also that commutation would protect workmen against insolvent employers. The Government said that commutation was very different from putting a stop on weekly payments, since the sum paid down in commutation would purchase an annuity.

When this clause, however, reached the House of Lords they took away from the workmen the power to commute, and as a quid pro quo eliminated the limit of three years' full wages imposed on the amount of commutation. The House of Commons approved this change.

The first schedule (13) therefore provides that where any weekly payment has continued for not less than six months the liability therefor may be redeemed by the employer by payment of a lump sum, fixed by agreement or arbitration, which may be ordered to be invested or otherwise applied by the committee or arbitrator.

REVIEW OF AWARD.

First schedule (12) also provides that either the master or the workman may, on request, have any weekly payment reviewed, so that it may be ended, diminished, or increased according to the facts then found by agreement or arbitration.

MANNER OF PAYMENT.

The first schedule (4) requires death payments to be made "to the legal personal representative," and if none "to or for the benefit of his dependents," and if no dependents are left "to the person to whom the expenses are due"; while the second schedule (12) specifies that compensation shall be paid on the receipt of the person to whom it is payable. The second schedule (10) empowers the county court to make its necessary rules.

NOTICE OF ACCIDENT AND CLAIM.

It was urged that requiring notice of accident and claim would protect employers against bogus claims, and would protect employees against losing their claims; that notice should be given before workmen left the service.

On the other hand, it was said that requiring notices would cause litigation, as attorneys would urge they were necessary in order to have the notices properly given, and further, that no notices were required under the general law of negligence.

After considerable debate, following the precedent of the employers' liability act of 1880, the act provides (sec. 2 (1)) for notice of accident as soon as practicable thereafter and before the workman has voluntarily left the service, while claim must be made in six months from date of accident if not fatal, and in six months from date of death, if fatal; but to prevent the claim of the workman from being prejudiced through want of or any defect or inaccuracy in notice of

accident by a bona fide mistake or other reasonable cause (as through a trivial accident later developing into a serious one), the section provides that such want of or defect in notice shall not be a bar if it is found in the claim proceedings that the employer is not prejudiced in his defense by such want or defect or that it was occasioned by mistake or other reasonable cause.

CONTRACTING OUT.

Contracting out was the question on which the Asquith bill had been wrecked, and was debated at length. The Government introduced a clause into their bill on the lines of the Dudley amendment to the Asquith bill (which the House of Commons had then rejected). The home secretary said that under it the workman could not deprive himself of the benefits of the bill, but was to have freedom to arrange his own wants in his own way, provided that such arrangement was not less favorable to him than the benefits of the bill; in the words of Mr. Chamberlain, that he should have freedom to "contract out" provided he was "not a pecuniary loser" by so doing; that the Government held to the principle of contracting out with that proviso.

To effect this, the bill as passed repealed existing contracts by section 9, but by section 3 permitted the employer to substitute, by contract with his workman, any "scheme of compensation benefit, or insurance," which was certified to beforehand by the registrar of friendly societies (a permanent Government official), after taking steps to ascertain the views of the employer and workman, as "not less favorable to the general body of workmen and their dependents than the provisions of this act;" but save that, the bill was to apply notwithstanding any contract to the contrary.

Section 3 (2) provides that the registrar's certificate might expire at the end of a limited period of not less than five years, and section 3 (3) prohibited the issue of a certificate for any scheme "which contains an obligation upon the workmen to join" as a "condition of their hiring." Section 3 (4), moreover, made it the duty of the registrar to examine into any complaint on behalf of the workmen that the scheme is no longer so favorable or is not being fairly administered, and so forth, and revoke his certificate if good cause exists, unless such cause is removed.

It was urged by the opposition (Mr. Asquith) that a workman should not be permitted to waive advantages given in the interest of the community, but it was answered there was no objection, if he gets better terms. Other objections to the clause were that the schemes would localize men; that the clause would injure friendly societies, as the workmen's contributions to schemes would take the place of contribution to the benefit and friendly societies whose income was mainly from that source; that the workmen and trades unions were against it.

It was answered that the clause would give a great impetus to friendly societies and would allow existing associations to use their own machinery and go further than the bill, since employers would figure out the cost of accidents over 5 to 10 years, and contribute the necessary amount to the existing associations, allowing the workmen to manage them; that the latter would deal with the slight accidents themselves and prevent malingering, and reduce the cost of

accidents so as to have more to spend on their sickness features. It was also urged that friendly societies were based on considerations other than pecuniary ones, and that the clause compelled the registrar to ascertain the views of workmen and employers before certifying a scheme.

Mr. Chamberlain introduced an amendment to make the employer liable if the funds of the scheme failed, but against this it was urged that such a liability would prevent the clause being used, as employers would consider it a "heads you win, tails I lose" clause.

Mr. Balfour said the employers' inducement to form schemes was the establishment of better relations with their men, and the workmen's inducement to get more money from their employers. But the clause guaranteeing the solvency of the fund was ultimately eliminated by the House of Lords on the ground that as the workmen would spend the money, it would prevent all contracting out, and the elimination was subsequently agreed to by the House of Commons on the ground that the registrar had to be satisfied that the employers' liability was the equivalent of the bill.

The House of Lords passed an amendment allowing the registrar to consider as a basis for his certificate all the circumstances of the case, which was disagreed to by the House of Commons, however, and failed.

PRACTICAL WORKING OF THE ACTS—RECOMMENDATIONS.

In November, 1903, a committee was appointed by the home secretary to inquire and report to the home office—

(1) What amendments in the law relating to compensation for injuries to workmen are necessary or desirable, and

(2) To what classes of employments not now included in the workmen's compensation acts those acts can properly be extended with or without modification.

This committee consisted of the following gentlemen: Sir Kenelm Digby, K. C. B. (chairman); Sir Benjamin Browne, D. C. L. Memb. Inst. C. E.; His Honor Judge Lumley Smith, K. C.; Capt. A. J. G. Chalmers, of the Board of Trade; Mr. George N. Barnes, secretary of the Amalgamated Society of Engineers; and Mr. Robert Reid Bannatyne, of the home office (secretary).

The committee utilized information furnished by the labor department of the board of trade and other Government departments, by inspectors of factories and mines and other Government officials, and by the judges of the county courts. It took extended evidence from representatives of both employers and workmen in the chief industries, from employers' associations and trades unions, from mutual and ordinary insurance companies, and from numerous other sources. It made an exhaustive report in August, 1904, which has been accepted as a basis for future legislation, and its evidence and findings are therefore referred to at length here.

SCOPE OF THE ACTS.

The restriction of the scope of the acts to a few industries was carefully considered by the committee, and they concluded that the experience justified extension to other industries.

The act of 1900 including agriculture had taken away the dangerous employment test for inclusion, and that test could not therefore be adopted as the general principle in extension to other occupations.

The two alternatives presented were to amend the acts (1) by a general extension of their scope to cover all occupations with certain definite exceptions, such as (*a*) small employers, (*b*) some forms of casual labor, (*c*) employments which are not by way of trade or for the purpose of profit, as limited in the factory acts; or (2) by extension to further specially specified industries.

The committee recommend the latter course, suggesting inclusion of any industries which were dangerous, and also those to which the advantage of the act could be applied without imposing an undue burden on the employers, provided that the industry to be included was not one composed largely of small employers.

who did not insure. As to the limitations on the employments already covered in the act which had been found to be unsatisfactory, they recommended changing section 7 (1) limiting the act to accidents "on or in or about" the places or works, to cover accidents "while on the business of the employers," since they found that, though they were intended to limit responsibility to places which were under the employers' control, those words of the act had resulted in dissatisfaction and incongruity, a mechanical engineer, for instance, being covered in the factory, but not while superintending erection for his employer. They recommended covering all building, all quarries, and practically all laundries (except only those without more than two persons outside of the family). They also recommended including under the definition of engineering, road making, well sinking, and other excavating operations, also the construction of telegraphs, telephones, and other electric appliances.

TRADE DISEASES.

The committee did not, however, consider it advisable to include trade diseases, thinking it better to leave those to special legislation for sickness, and to still leave to the courts such questions as "whether anthrax is an accident."

SEAMEN.

Employers urged the hardship and impracticability of including seamen under the act, owing to prolonged absence of ships and absence of owners' control, frequent changes in crew, and consequent impossibility of securing evidence, as well as the fact that the "whole venture is frequently imperiled through act of God," and consequently compensation should be undertaken by the State. On the other hand, Mr. Havelock Wilson, who has strongly advocated the cause of seamen, urged that exactly the same conditions as to compensation should prevail at sea as on shore. He testified that shipowners were heavy insurers and could bear a loss.

The committee found that as the principle of the act established compensation, whether blame existed or not, the absence of control, etc., gave no reason (nor did they find any) why the principle should not extend to those afloat as well as to those on land. However, after considering the construction of the existing merchants' shipping act, which already amply provided for minor injuries, they recommended an extension of that act to cover death and permanent total and partial disablements of seamen rather than an extension of the workmen's compensation act. As coasting and fishing vessel owners frequently had no assets if their vessels were lost, and as the lives of master and crew frequently had to be risked at sea in the cause of humanity, the committee recommended compulsory insurance with State contribution for seamen, recommending, however, further inquiry as to the fishing trade.

CARRIERS.

They recommended inclusion of all carriers by land or inland navigation.

WORKSHOPS.

They recommended inclusion of the larger workshops, excluding all employing not more than five persons.

SHOP ASSISTANTS.

They did not recommend inclusion of shop assistants, unless there was a general extension of the act, as this was not a hazardous occupation, and "there would also be considerable difficulty as regards small shops."

DOMESTIC SERVANTS.

For a similar reason, as well as on the ground of not further extending the principle to persons not employed in trade or for purpose of gain, they did not recommend the inclusion of domestic servants, unless under special circumstances of danger, such as coachman, etc.

PUBLIC SERVANTS.

As to public servants, the committee saw no reason for treating them differently from other work people.

DEFENSE OF SERIOUS AND WILLFUL MISCONDUCT.

Section 1 (2) (*c*).—The evidence of both employer and workman indicated that this defense had been in practice infrequently enforced or sustained by the courts (perhaps with the exception of coal-mine cases), though employers who desired a more specific definition had possibly suffered hardship from it rather than the men. The committee felt it better to leave it open to the arbitrator to look at the surrounding circumstances whenever the defense was set up, and they therefore did not feel justified in recommending any change in the wording or clause.

TWO WEEKS' IMMUNITY—MALINGERING.

Section 1 (2) (*a*) and first schedule (1) (*b*).—In the evidence before the committee from the workmen's side it was almost universally represented that a reduction of the period of nonpayment from two weeks to two or three days, and in the case of serious accidents dating the compensation back to the day of the accident, would save much hardship, especially in those trades where women were employed, where pay was low (in which connection it was stated that 150,000 railroad employees earned less than 18s. ($4.38) a week), or where the injured people were not members of any friendly society; while from the employers' side it was shown by figures submitted that the two weeks' nonpayment prevented malingering by workmen absenting themselves from work for injuries that were trivial and more or less unreal.

The committee concluded that while it was true that a large number of workmen were put to suffering by this provision, if it were eliminated a large number who had also allowances from friendly societies, etc., would prolong the period for trivial accidents, which it was impracticable for employers to supervise, and that dating back the compensation, if the disablement lasted for two weeks,

would also produce malingering. Again, having regard to the additional cost involved of including all cases during the first two weeks, shown by insurance companies to be from 25 to 50 per cent, varying with the different trades, and by the registrar of friendly societies for the schemes he had certified to be 39 per cent of the total cost, while dating compensation for disablements lasting two weeks back to the day of accident produced estimates of a somewhat less addition to the cost, the committee found no sufficient reason to justify them in recommending a departure from the principle of two weeks' immunity deliberately adopted by the legislature.

ACTS OF STRANGERS.

Employers liable under the act being limited by section 7 (1) to "undertakers," with a view to prevention of the workmen's loss of benefits or evasion of employers' responsibility by subcontracting, it was found that section 4 of the act, which made the undertaker liable to subcontractors' men, might become a dangerous extension of liability if the act were changed to cover work being done off the premises of the undertaker (for instance, it might make a cloth manufacturer liable to the cloth dyers' men), and the committee recommended avoiding the extension of undertaker's liability away from his works.

It was also pointed out that while it was the intention of the act (sec. 4) that the undertaker should have an indemnity over against the actual employer of the injured man, technical interpretation of the wording of the act had precluded him in many cases from getting it, as in the case of railways, factories, mines, and quarries. The committee therefore recommended treating the undertaker more as a surety in any judgments rendered, etc., and making him, in fact, merely a guarantor of compensation payable by subcontractors.

ACT OF 1900.

This act, in adding agriculture, was different from the act of 1897 in that it attempted to exempt small employers and was not confined to trade or industry but extended to persons in private employment.

One difficulty found in the application of this act was the legal interpretation of the limitation of the act to employers who habitually employ one workman and it was recommended that this be changed to "employ throughout the year at least one workman in agriculture;" it was also recommended that the casual laborer, including harvesters, etc., at hay time, be not covered. Another difficulty was that the small farmer did not insure, with consequent danger of ruin to him financially and failure to compensate his workmen.

PREVENTION OF ACCIDENTS.

As to the effect of the workmen's compensation act in the direction of the prevention of accident, the committee found it extremely difficult to estimate it.

The evidence of the chief inspector of factories showed that the act somewhat tended to eliminate the probability of recovering penalties for failures to guard machines, etc., owing to the fact that

a provision in the act (the latter part of sec. 1 (5)) dealt with penalties and limited the amount of their payment to the injured workmen. Other evidence showed that there had been some tendency to make employees more careless.

On the other hand, a coal mining employers' association said that the act had resulted in a great diminution of real accidents, namely, serious cases, but that it had been accompanied by a great rise in obscure accidents, namely, cases like sprains and trivial accidents; and other testimony was to the effect that increased precautions to avoid accidents had resulted.

The committee, on the whole, came to the conclusion that the act had not had any marked or ascertainable effect one way or the other upon the safety of the workmen. They, however, recommended the repeal of the latter part of section 1 (5), as they did not consider there was any serious objection, where negligence caused an injury, to the injured workman receiving additional compensation by having a penalty, recovered under criminal enactment, paid over to him in whole or in part by the secretary of state.

BURDEN OF THE ACTS.

The committee took testimony as to the extent of the pecuniary burden resulting from the acts, with a view to seeing that no excessive burden was thrown on the employer, with consequent injury to the trade and ultimate loss to the workmen.

They expressed the opinion that employers might be reaping an advantage from having a defined obligation by law imposed on all employers, instead of trusting to moral obligations, which were met by some employers and not by others; that in some instances employers threw the burden on the consumer (as, for instance, they found stevedores to be including the cost in their contract prices); that when the labor was unorganized it was sometimes directly thrown upon wages (which they suggested might be checked by extending legislation in line with the Truck acts). One of the members of the committee, Sir Benjamin Browne, had estimated that the act affected trade profits to the extent of reducing a 5 per cent profit on capital to 4¾ per cent, saying also that English manufacturers had so much competition with foreign trade that it would restrict employment and fall, as permanent burdens do, on workmen. The committee, however, believed from the evidence submitted that so far as employers were concerned their chief desire seemed to be for greater certainty in their liability, as certainty made insurance premiums less, and they found that the steady growth of the burden of the permanent weekly payment benefits was a difficulty preventing employers arriving with certainty at the cost, as these necessarily go on accumulating year by year until the point is reached at which the number of new pensioners is balanced by the dropping off of the old.

COST OF THE ACTS.

The committee took the effect on the coal-mine industry as a crucial test of the act. In the evidence before them on the subject of cost one coal owners' mutual insurance association, which had been formed by the large coal owners in the north, after the passing

of the act, testified that the cost of all the accidents in their mines had been 0.36d. (0.73 cent) per ton in 1899, increasing to 0.64d. (1.30 cents) in 1903, or a trifle over one-half of 1 per cent on wages in 1899, increasing to nearly nine-tenths of 1 per cent in 1903, the increase being attributed to the growth of the permanent weekly payments. The association itself paid for the cost of supervision and for all legal expenses, as well as for all disasters (accidents involving more than four deaths), and later for all deaths, leaving the employers individually to pay for nonfatal cases. Another similar association in the Midlands gave similar evidence, namely, that their increase in cost was most marked in the accidents which fell into their classification of nonfatal cases over 26 weeks' duration. A similar Yorkshire association, covering 20,000,000 tons of coal raising yearly, testified that their actuary estimated on their experience that the cost, including medical, which was a trifle higher than the first association quoted, would, through the permanent allowances, go nearly as high as 1¼ per cent of wages before reaching the maximum. And a South Wales association, covering 80,000 men, showed that the cost had risen from a little over one-half of 1 per cent on wages in 1900 to three-fourths of 1 per cent in 1903, attributable to the permanent allowances, with a guess that it might reach double the last figure. The committee therefore felt that the rapid growth of compensation in the coal industry, its uncertainty, and the liability to disasters in that trade were reasons for caution in materially increasing the benefits payable under the act.

One cotton-trade mutual insurance association, covering 40,000 work people, originally estimated the cost at one-eighth of 1 per cent on wages for weaving, and three-eighths of 1 per cent for spinning, but found that one-sixteenth of 1 per cent was adequate for weaving, and thought a little more than one-fourth of 1 per cent would suffice for spinning. The Master Cotton Spinners' Association, paying £3,000,000 ($14,599,500) a year wages, which had estimated the cost of spinning up to one-half of 1 per cent, gave evidence showing a similar cost, though it had secured insurance at less.

A mutual builders' accident insurance company that "insured some thousands of firms," found without, however, reserving for permanent injuries, that the cost was one-half of 1 per cent. A large firm of building contractors courteously related their own experience. They stated that they transfer the cost to the purchaser in their contracts, and that they also protect themselves by contract with their subcontractors against claim by the subcontractors' men, though in practice the latter invariably proceed against the subcontractors.

Ratio of accidents to total workmen employed and of compensation to total wages paid by a firm of building contractors, 1901 to 1906.

Year.	Accidents.		Compensation for accidents.	
	Number.	Per cent of total workmen.	Amount.	Per cent of total wages paid.
1901	84	6.6	$1,645	0.15
1902	72	4.8	3,601	.68
1903	84	5.4	3,256	.59
1904	114	7.8	4,034	.64
1905	133	8.2	5,358	.75
1906	94	6.6	7,412	1.10

As to the regular commercial insurance companies, the committee quoted especially the evidence of Mr. S. Stanley Brown, general manager of a leading company, who said that rates of insurance against accidents charged by an association of these insurance companies, which were at first based on the German and Austrian experiences, had been found too high, and in June, 1899, were reduced one-third, resulting in the percentage of rates on wages shown in the second column of the following table, while his own company's rates for December 31, 1903, are shown in the last column of the table. His company gives the average of all rates charged by them as nearly 1 per cent.

Rate per cent on wages imposed for insurance against accidents in various industries by an association of insurance companies in 1899 and by a leading commercial insurance company in 1903.

Industry.	Rate per cent on wages imposed by—	
	An association of companies, 1899.	A leading insurance company, 1903.
Builders, general	1.25	1.00
Contractors	1.67 to 2.38	1.20 to 2.50
Stevedores	2.38	2.38 to 10.00
Quarries	1.50	1.20
Engineers and iron smelting	1.00	.50 to 1.00
Textiles	.33	.....
Manufactures, light	.....	.20
Manufactures, heavy	.....	.55

The reports of the same insurance company show an almost steady yearly increase in the average cost of each accident settled, as follows:

Each death case cost £113 ($550) during 1901, increasing to £117 ($569) during 1905; each permanent disablement case cost £55 ($268) during 1901, increasing to £87 ($423) during 1905, and in 1906 to £97 ($472); each temporary disablement case cost about £5 ($24), with little fluctuation during the period.

The committee said that it was through such associations of masters and men, respectively, and the ordinary insurance companies that the financial burden was removed from the shoulders of

the individual employer and distributed more or less equally throughout the trade.

The actual cost of the compensation acts to the different trades is not to be had officially, with one exception, that of railways. In the home office returns it is stated that the total amount paid by the railway companies as compensation under the act in the whole country was £118,849 ($578,379) in 1899, £146,027 ($710,640) in 1900, £153,928 ($749,091) in 1901, £144,155 ($701,530) in 1902, £155,495 ($756,716) in 1903, and £162,155 ($789,127) in 1904.

BANKRUPTCY OF EMPLOYER.

It was found that so far, owing to prosperous times and the act being limited to the larger employers, there had been little difficulty from this source; however, the committee felt that the danger of distress to workmen through it happening was very real and should be provided for, especially if the act were extended to cover small employers. They advocated substituting for the personal responsibility of the individual employer the security of a solvent insurance fund. The committee attached great weight to recommendations of statutory regulation of all insurance companies undertaking the risk, such as exist in America, etc., to provide against dangerous competition, and drew attention to the necessity of seriously considering a State or compulsory insurance in some form or other; especially was this necessary to enable the workmen of the small employer to get his benefits, since through ignorance or inability his employer failed to insure in many instances.

The committee concluded that this evidence showed that the burden on employers had as yet not been excessive, but that it tended to increase. This suggested caution in legislation increasing it and especially in adding to its indefiniteness or uncertainty.

CHOICE OF REMEDIES AND LIABILITY OF EMPLOYER.

The committee reached the conclusion that the provisions of section 1 (2) (*b*) and (4), permitting choice of the remedies of suit under the employers' liability act of 1880, or common law, or proceeding under the workmen's compensation act, and also allowing the benefits under the latter to be assessed on failure of suit under the former, had worked largely to the disadvantage of both employers and workmen, and were responsible for a large amount of illegitimate litigation, in that they had resulted in the illegitimate use or threat of use against the employer of the remedies at common law and under the employers' liability act of 1880, either for the purpose of benefitting the unscrupulous lawyers, who could thereby run up the costs, or for the purpose of improperly forcing settlement under the workmen's compensation act, and that the judge's power to assess the costs of an unsuccessful suit against the compensation under the workmen's compensation act was in practice rarely used and was therefore ineffective as a check. That this abuse had assumed somewhat extended proportions was shown in the fact that, according to Mr. Troup's testimony, in litigated cases in 1902 the cases under the employers' liability act amounted to about half the workmen's compensation cases in Scotland, as against one-third in England, and

that the costs under the employers' liability act averaged £25 ($121.66), as against £11 ($53.53) under the workmen's compensation act.

A simple remedy for these abuses would have been to repeal the employers' liability act and common-law rights or consolidate them with the workmen's compensation act; however, while admitting that the testimony showed that the advantages to workmen were great of proceeding under the workmen's compensation act in preference to taking the risks, uncertainty, and costs of suit under the old remedies, they believed repeal of those old remedies was not justified, as there were cases where they were the more appropriate remedies, though they anticipated they would fall more and more into disuse.

Another suggestion considered was to grant higher benefits under the workmen's compensation act where there was much pain or suffering, disfigurement, extraordinary expenses of cure, or wrongful act or default of employer. This they believed would only be reenacting the employers' liability act as part of the workmen's compensation act and would be more of an incentive to attorneys to litigate in a larger number of cases, on the chance of securing the higher benefits than the existing election, which tended to prevent litigation somewhat.

Therefore, to prevent these abuses without preventing recourse to those old remedies in cases where they were really appropriate and at the same time without inflicting any real loss upon the workmen, the committee recommended the repeal of section 1 (4), which gave the court power to assess compensation after unsuccessful suit under the employers' liability act of 1880 or at common law and the adoption of provisions enabling employers to apply to the judge for a stay of any such suits (commenced or threatened) on evidence that the workman had an adequate remedy under the workmen's compensation act; also, that a plea to that effect might be made available as a defense to suits under the employers' liability act of 1880 or at common law.

This would leave it open to the court, if it thought the workmen's compensation remedy inadequate or that there was good ground for a suit at common law or under the employers' liability act of 1880, to refuse the application or, if it thought otherwise, to stop the suit.

DEFENSES OF FELLOW-SERVANT NEGLIGENCE, ASSUMPTION OF RISK, AND CONTRIBUTORY NEGLIGENCE.

The committee said that the principle of the workmen's compensation act was essentially different from that on which the old remedies were based, and that it had largely superseded the old remedies and would in future entirely supersede them; that it was, therefore, undesirable to bring those old remedies into more active operation, which would result from any attempt to abolish the doctrine of fellow-servant negligence, etc., and that so doing would open the floodgates to a stream of litigation without affording any more effective remedy than now provided by the workmen's compensation act. They therefore recommended leaving the common law and employers' liability act unchanged, on the expectation that they would gradually cease to be used.

The wisdom of this is illustrated by the home office returns of the figures for death, which is more likely to result in suit than less serious injury, given in the following table:

Average damages in case of death under employers' liability act and average compensation under workmen's compensation acts, 1899 to 1904.

Year.	Employers' liability act.		Workmen's compensation acts.	
	Cases of death.	Average damages.	Cases of death.	Average compensation.
1899	14	$556.18	219	$842.29
1900	7	772.94	245	795.37
1901	9	436.77	301	916.75
1902	8	561.55	264	817.59
1903	14	[1] 1,198.44	323	880.84
1904	9	575.54	451	864.03

[1] Including two cases of special damages.

The average amount of lawyers' costs was approximately £25 ($122) under the employers' liability act and £13 ($63) under the workmen's compensation act.

ARBITRATION AND LITIGATION.

The committee inquired as to how far criticism of the act was justified on the score of litigation and how far it was due to preventable causes.

They found that the vast majority of cases were settled by agreement, without litigation.

Secretaries of the leading trade unions gave details showing that many unions had all accidents reported, and settled the bulk of the cases for the men without any cost, and that some cases of difficulty were settled by their lawyers. The use of lawyers varied somewhat in the different trades, as did the arbitration and court cases, the latter being covered in most trades by 5 to 10 per cent of the cases. In the South Wales Miners' Federation (130,000 men) the number of court cases was said to be "infinitesimally small," and they were cases only where a question of principle existed to be settled, or a dispute as to facts, although there had been several disasters in the trade. Employers' associations and mutual insurance associations corroborated the trades union testimony that 95 per cent of the cases were settled out of court. Other insurance societies and two leading railways said that only 1½ per cent of claims were arbitrated, the rest being settled by agreement. The secretary of the Cotton Trades Insurance Association (formed after the 1897 act) said that his practice was to settle with the trades union secretaries; that he had only 1 per cent of cases in court, and that only two cases had been brought under the employers' liability act of 1880, and those in the first year of the association's existence; that it was in the non-union trades that men went to attorneys, who ran up the costs.

The limitations of employment covered by the acts were found to be responsible for most of the litigation. In 1902, 43 appeals out of 95 turned on the question as to whether the employment was or was

not within the act. The committee felt that the inclusion of all building operations under the act, even the small builders, would obviate litigation arising out of the limit to over 30 feet in height, the requirement of scaffolding and the employment of machinery, etc., and that the removal of the 20 feet deep limit from quarries and the removal of the special requirements as to laundries would also obviate litigation.

Definitions which had also caused litigation were considered, such as "accidents arising out of and in the course of the employment." No change as to these was recommended, however, as they had been so often judicially passed on and were best left to the courts. The committee had no recommendation to make as to factories proper, railways, or mines. As to constructive factories, although the House of Lords' decisions had modified the difficulties as to loading and unloading on docks, the committee recommended that employment on docks, wharves, quays, and warehouses be specifically stated in the act, covering also the incidental machinery or plant, and they recommended a change in the definition of engineering.

The committee drew especial attention to the fact that in the one district (the Durham coal-mining district), where, under second schedule (1), a committee of employers and men had been formed and exercised their statutory power of arbitration, a most excellent example of satisfactory reduction of litigation was shown. It resulted in the benefits being paid automatically, even the committee having, during five years, to pass only on 205 cases out of 28,000 nonfatal cases and on 204 out of 664 fatal cases, while of these only 29 nonfatal and 27 fatal cases were taken into court, and some of those were accidents in which the men's own committee told them they had no case.

ARBITRATION PROVISIONS.

It was found that the arbitration by the system of committee of employer and workman (second schedule (1)), which, however, had not been extensively used, had been most successful where used, practically rendering the operation of the act automatic, nor was there any complaint of the provision (2) that the parties appoint a single arbitrator. But the provisions (2) and (3) for use of the county court judge or his appointee as arbitrator, had resulted in the arbitrations thereunder being practically county court trials somewhat simplified; however, no recommendation was made to change that.

A strong recommendation of change was, however, directed to the clause (second schedule (8)) as to registration of memoranda of agreements, with a view to controlling the agreements made; it took the form of placing a duty on the employer to register them, empowering the court to enforce a penalty for failure to do so, and rendering them, if unregistered, unavailable as a defense to future claim for weekly payments.

APPEALS.

The creation of a special court (two county court judges and one permanent judge) to hear appeals on both law and fact, with appeals therefrom to both the court of appeals and the House of Lords, was suggested by Mr. Ruegg, in order to obviate the delay of appeals, and bring the different county court decisions more into harmony. The

committee, however, recommended that no appeal be allowed on questions of fact, and no change be made except in the direction of unification of decisions on law, by permitting appeal on law to the House of Lords from both Scotland and Ireland, the chief dispute on fact being as to serious and willful misconduct, which was dealt with by the arbitrator. Greater facility of appeal would, they believed, add to delay and expense.

DOCTORS.

As the causes of the act dealing with doctors (first schedule (3), (11), and second shedule (13), made provision for calling in the official medical referee in arbitration proceedings only after the other medical testimony had been heard, practically no use was made of him, nor was he much used when a review of compensation being paid was contemplated, as then it was only optional with the workman to go to him at his own expense. The committee, therefore, recommended that the medical referee should be used at a much earlier stage; that after the examination by the employer's doctor, the result should be communicated to the workman in order that the workman might then be examined by his own doctor, and if a dispute existed it should then and there be submitted to the medical referee before the disputed case goes to court, and that his decision should be final for any subsequent proceedings. One modification, however, was suggested for new accidents, namely, of leaving to the discretion of the registrar, after the reports of both the doctors of the employer and the workman had been filed with him, the question of using the medical referee.

It was thought advisable to leave the judge his power of summoning the medical referee to sit with him as assessor in the actual trial if a case reached the court.

It was further suggested that the medical referee should have the duty of giving employment certificates as to aged, infirm, or maimed persons for their special rate of compensation, which the committee had recommended.

As to the position of the medical referee himself, it was strongly urged that he should be a public officer rather than a medical man in practice, paid by salary, not by fees. In other words, a civil servant in the permanent civil service, one to act for each district, and to prevent making him a partisan by his employment either by one side or the other, that he should have his salary paid by the State.

The committee found that where the organization of the master and men was most complete there was the least amount of litigation, the workmen who had no organization to resort to necessarily having to call in the assistance of lawyers. They concluded that authoritative decisions being necessary the actual litigation produced by the act had been very small, and they felt that providing more effective machinery for settling doubtful questions and increasing the functions of the medical referee would further reduce it.

From the official figures of the proportion of cases that reach the courts, it will be seen that in the home-office statistics for 1904 it is stated that even in cases of death (including cases finally settled out of court, and also those in court solely to apportion benefits among beneficiaries) not 25 per cent came in any way before the courts, while probably less than 1 per cent of incapacity cases did.

COMPENSATION PAYABLE—THE BENEFICIARIES.

As to the persons entitled to receive compensation, though the definition of workman in the act was wide (covering all employees, whether in manual labor or otherwise, etc.), the committee recommended the inclusion of brother and sister in the beneficiaries in addition to descendants and ancestors (i. e., the English definition of dependents). This was opposed by employers, who said it would tend to increase their difficulty, in that they now had to pay compensation exceeding what was necessary for the support of dependents, as, for instance, to pay a father earning good wages for the death of a son, provided as a fact the son contributed slightly to the family fund.

Aliens killed or injured within the United Kingdom have the same right of recovery (as have their beneficiaries while resident also) that British subjects have under the act. The committee, however, recommended that the act be made not to extend to beneficiaries who are nonresident aliens, or to beneficiaries who are nonresident British subjects, so as to obviate difficulty in determining the liability involved.

DEATH BENEFITS.

The committee found little criticism, when the deceased left persons wholly dependent, of the amount of the limits payable—minimum £150 ($730), maximum £300 ($1,460)—and concluded they had been found satisfactory in practice, and though they found some complaint from employers of decisions as to what constituted partial dependency and awards that disregarded consideration of whether such dependency was for necessaries or not, they concluded that no change in that definition was desirable.

INCAPACITY BENEFITS.

Interpretation of the courts as to what constituted average weekly earnings resulted at one time in excluding all casual labor, through the difficulty of reaching an average for a man employed spasmodically, casual labor covering not only men employed for a job, but large classes, like dock labor. Although the House of Lords reversed this decision, the committee recommended that the duty of "estimating," the injured man's own earnings should be placed upon the judge, guided somewhat by the standard of the district for like employment (as provided by the employers' liability act of 1880), instead of taking the district standard of wages alone, though the latter would be a simpler method. They also recommended an amendment to base it on the net and not on the gross earnings, as the latter often included pay for helpers, tools, etc.

LUMP-SUM PAYMENTS.

Evidence submitted showing the squandering and loss of lump sums paid to widows and the advantage to them and to children of weekly payments in lieu of lump sums, as well as evidence showing the cost to the employer in getting valid releases, led the committee to recommend more elasticity in the powers conferred on the arbitrator in this regard under first schedule (6) by payment of the money into court by the employer and granting the arbitrator a voice in the

method of distribution. They recommended that the mode of payment be settled in each case by the county court judge, with power to reduce the amount of any weekly payment to a widow on remarriage, neglect of children, etc., and to decide on the amount, time, and mode of payments to beneficiaries other than the widow, using the office of the county court as the machinery for that purpose whether the amount and compensation was settled by agreement or otherwise.

OFFICIAL COUNTY COURT RETURNS.

The official returns of cases under the workmen's compensation acts, dealt with by county court judges, and their arbitrators in England and Wales, show that in the six years, 1899 to 1904, the average award for deaths where there were dependents varied from £163 8s. 9d. ($795.37) to £188 7s. 7d. ($916.75); for total incapacity, from 10s. 11d. to 12s. 2d. ($2.66 to $2.96) per week, and for partial incapacity, from 9s. 2d. to 10s. 9d. ($2.23 to $2.62) per week, while in 1894 the average lump-sum award for incapacity was £34 12s. 8d. ($168.54), there being in that year 105 lump-sum against 650 weekly payment awards.

MINORS.

Both employers and workmen agreed that one-half wages paid to minors permanently injured had proved to be often insufficient compensation. Proposals were made to consider, in fixing compensation, the full wages earned by the highest-grade workmen in the same employ; to fix a higher scale than one-half wages—say, full wages; to fix a minimum of 10s. ($2.43), with power to increase that on reaching 21 years of age. The committee recommended fixing a maximum and leaving it to the discretion of the judge to assess an amount up to that maximum.

OLD MEN AND MAIMED AND DISEASED PERSONS.

The committee found from extended evidence of both employers and workmen that the acts had largely increased the difficulty already existing of old men getting and retaining employment. They found further that employers were being compelled to discharge persons maimed, as, for instance, one-eyed men, and to refuse to reemploy them after accident. While the case of Lysons *v.* Knowles (1 Q. B., 780; 69 L. J. Q. B., 449; 82 L. T., 189), decided by the House of Lords, finally settled that casual labor was not excluded from the act, it was felt, too, that this decision would further operate to bar old men from employment.

This the committee considered to be such a serious drawback to the other advantages of the act that they recommended amendments to be made enabling employers to hire such persons upon special terms as to compensation for accidents, and they suggested an age limit of 60 as desirable if hale, and under that age if infirm or maimed, to which the amendment should apply, with a minimum compensation of 5s. ($1.22) a week for injury and £25 ($121.66) for death.

COMMUTATION OF BENEFITS.

The evidence showed that in practice the employer's right under first schedule (13) to apply for a redemption by arbitration of weekly payments by a lump sum was rarely used; that few agreements for commutation were registered even under second schedule (8), but that great numbers of unregistered commutations had actually taken place by voluntary agreement. The latter permitted the defense of accord and satisfaction to subsequent claim for weekly payments. These commutations were often made at figures very much below what the weekly benefits justified, and in many cases were improvident and also oppressive settlements, brought about by improper pressure on the workmen. Though it was found undoubtedly advantageous to workmen, as well as masters, that commutation should be possible, the committee said that better control over it should be adopted. They considered that the evidence showed it would be disadvantageous to give the workman a right to demand a commutation as likely to increase the evils attendant on lump-sum payment generally, but in order to render the principle of compulsory commutation workable, if demanded by the masters, the committee recommended the adoption of a maximum limit on the amount of commutation of £500 (2,433), and urged, after making the obligation to register commutations stringent by rendering an unregistered agreement inoperative, and so forth, also the giving of discretion to the registrar as to registering, and to the judge as to reopening an entry within six months for fraud or undue influence.

REVIEW OF AWARD.

The difficulty arose of determining, under first schedule (2) and (12), when and to what extent the compensation granted should be reduced.

From the workmen's standpoint, as they got only one-half of their loss to begin with, it was advocated and decided by some judges that this one-half wage compensation allowance should not be reduced until they could again earn full wages, and that no reduction of compensation should take place so long as what they earned, while partially incapacitated, added to the compensation allowed, was not more than their full wages before the accident. Other judges divided the loss, holding that the difference between their partial earnings and their full wages should be divided, the employer bearing one-half the loss and the workman bearing one-half. The committee recommended a more explicit clause adopting the latter mode, thus making the workman share the loss with the employer.

The test of earning capacity had proved to be another difficulty, as, for instance, to determine whether a man who had lost one eye was incapacitated, etc. It was suggested that in the highly organized trades something approaching a tariff for injuries might ultimately be agreed on, apart from parliamentary enactment. The committee thought earning capacity, not only at the same kind of work as before the accident, but at any kind of work, should suffice, and strongly recommended clearer enactment. They advocated bringing the medical representatives of employer and workman together at an earlier stage, with the official medical referee as arbiter.

As to increase of weekly payments, it was found that in practice the maximum payment had been so universally allowed that the provision for increase had become unimportant.

NOTICE OF ACCIDENT AND CLAIM.

The requirement in section 2 (1) for notice of accident as soon as practicable after the happening thereof caused laxness in practice and resulted in employers' complaints that it failed to attain the object of enabling them to verify the facts and ascertain the nature and extent of the injury. The committee recommended a limit of six days for notice. As to the claim for compensation the House of Lords had decided that a mere demand was sufficient to entitle the workman at any time thereafter to institute proceedings. The committee recommended that a written notice of claim be required in three months after the accident. After the expiry of these periods, however, they recommended that leave be given to the workman to file a sworn statement before the registrar showing sufficient reason for the necessary steps not having been taken within the limited time, that notice of this action be served on the employer, and if the latter should object to waiving notice that the registrar should refer the matter for decision of the judge.

CONTRACTING OUT.

As to the effect on mutual benefit and friendly societies, the committee found that where these were supported jointly by the workmen and employers such schemes had been practically put an end to by the act, except in those cases where schemes were framed under section 3 of the act, through the discontinuance of employers' contributions. They found, however, that in some cases voluntary arrangements continued unaffected by the act, where employers were already providing benefits on a more liberal scale than the act, and that workmen's benefit clubs, which were entirely supported by the workmen, continued. There was evidence submitted that through these benefit funds, etc., workmen sometimes received more when disabled than if working.

The committee, in considering the contracting out of the act by contracting into definite schemes under section 3, found that, owing to the expense and trouble such schemes entail on both employers and workmen, no extensive use had been made of the section, and they also found that under those schemes which had been certified under the section, the actual payments exceeded the maximum that the act would have paid by 75 per cent, 65 per cent of that excess being pay for the first two weeks not covered by the act. Both workmen's and employers' representatives testified that the schemes, being based on the active cooperation of and being jointly administered by masters and workmen, brought special advantages over the act provisions, such as permitting provision for minor accidents, allowances for old age, and annuities instead of lump sums. They testified that the schemes led to prevention of accident, to litigation being reduced to a minimum, and to good feeling being promoted.

Mr. J. D. Stuart Sim, the chief registrar of friendly societies, characterizes section 3 as a splendid opportunity for regulating the rela-

tions between workmen and masters in a thoroughly satisfactory manner and on a sound financial basis; while Sir George Livesey, the chairman of the extensive South Metropolitan Gas Co., has succeeded in demonstrating the practicability of such a regulation in his 10 years' operation of a successful copartnership arrangement with all employees, one feature of which is his jury system, namely, having all accidents in his plants submitted to a jury of workmen, resulting in a large reduction of accidents, which feature was specially commended by the committee, who thoroughly indorsed the fact that the above advantages from the section existed, and recommended that it remain practically unchanged.

The following is a summary of receipts and expenditures of workmen's compensation schemes authorized by the registrar of friendly societies, under the workmen's compensation acts of 1897 and 1900, for the seven years from 1898 to 1905:

Summary of receipts and expenditures of workmen's compensation schemes authorized by the registrar of friendly societies under the workmen's compensation act for the 7-year period 1898 to 1905.

[From Report of the Chief Registrar of Friendly Societies for the year ending Dec. 31, 1905, Pt. A.]

Items.	Railways.	Factories.	Mines.	Quarries.	Total.
Number of schemes	2	24	28	2	56
Average number of workmen contracting out	38,491	21,100	58,638	861	119,090
RECEIPTS.					
Contributions of—					
Workmen	$296,185	$107,054	$995,238	$6,370	$1,404,847
Employers	578,918	221,295	1,334,944	12,025	2,147,182
Interest on investments	.....	8,453	95,846	389	104,688
Other receipts	.....	1,649	14,600	862	17,111
Total receipts	875,103	338,451	2,440,628	19,646	3,673,828
EXPENDITURES.					
Benefits for death from—					
Injury	237,101	41,589	231,475	501	510,666
Natural causes	.....	1,402	23,247	117	24,766
Benefits for incapacity:					
Weekly payments	542,668	138,067	928,684	7,018	1,616,437
Lump-sum payments	70,482	17,534	71,153	365	159,534
Medical aid	.....	11,811	99,530	2,681	114,022
Subscriptions to hospitals, etc	.....	4,088	13,003	453	17,544
Other benefits	4,194	40,344	130,680	1,309	176,527
Law costs	.....	516	6,341	.....	6,857
Other payments	.....	23,125	38,684	3,129	64,938
Management expenses	.....	4,526	169,004	978	174,508
Total	854,445	283,002	1,711,801	16,551	2,865,799
Funds on hand at end of period	20,658	70,725	804,700	6,993	903,076

SCHEME ADOPTED BY GOVERNMENT EMPLOYEES.

Following are the benefits under the scheme authorized by the registrar of friendly societies for Government establishments:

For death of a workman leaving dependents wholly dependent, three years' earnings, or not less than £150 ($729.98) nor more than £300 ($1,459.95), payable to the dependents or to a trustee; if the dependents are only in part dependent, one-half of the above; if there are no dependents, nor more than £10 ($48.67), for medical attendance and burial. In the discretion of the treasury, a portion of the

lump sum payable, up to one-half if there is one dependent child or up to two-thirds if there are more than one, may be set aside, and a pension equal to the annuity which the remainder of the lump sum would purchase granted to the widow or mother.

For incapacity, up to six months, one-half the average wages and hospital or medical attention while the beneficiary is on the hurt list, but "more favorable treatment while on the hurt list" if he is entitled to this under the regulations of his department.

For incapacity beyond six months, the following proportions of his average weekly earnings, according to degree of incapacity: Capacity totally destroyed, twenty-four-sixtieths of his earnings; materially impaired, eighteen-sixtieths; impaired, twelve-sixtieths; slightly impaired, six-sixtieths. If he continues in or returns to the Government service after the injury, the above allowance to be paid in addition to the earnings he then receives, up to the average full earnings before the injury, with periodical adjustments as sanctioned by the treasury. If he leaves the service and is entitled to a pension, the above allowance to be added to the pension, provided both together shall not exceed his earnings at time of injury or £300 ($1,459.95) a year, whichever is the less.

If the workman is a minor, the above compensation may be increased, in the discretion of the treasury, upon his reaching the age when in ordinary circumstances the pay of an adult workman would be granted him.

Commutation of allowance to a single payment may be made on agreement between the workman and the authorities of the department, with sanction of the treasury.

A claim for an injury which occurred more than three years before such claim was preferred can not be entertained unless such injury caused the applicant's discharge from the service or diminished his prospects for future employment.

BENEFICIAL EFFECT OF THE ACT.

As regards workmen, the committee found that the acts had conferred substantial benefits on those included in them; that prior to them practically the whole burden of industrial accident had fallen on the workmen, and it was right and necessary that some systematic provision for relief by law should be provided; that the act gave substantial relief, not complete indemnity, and there was little complaint from workmen of the limitation to one-half wages and other maximum limits in them.

Personal inquiry by the author concerning the practical workings of the act made during 1906 of Government officials, of employers, and of representatives of labor disclosed a unanimity of opinion that the principle of the act was sound, the extent to which it should be carried being the only question. The act was said to have proved a great boon to the workmen covered by it, labor strongly advocating its extension, while employers generally accepted it. In the building trades the secretary of one of the conciliation boards of a large master builders' association said that the principle was accepted by employers; that the burden was transferred to the building owner and not to wages, which had risen; that the act had tended to prevention of accident, as it had stimulated employers to have better plans; that it had

reduced litigation, which was largely confined to nonunion workmen. In the cotton trade a gentleman who was thoroughly informed as to its effect on that trade said that there had been no risk of injury to the trade through the burden of the act; that it had not, however, fallen on wages, which had increased 10 per cent; that the act had operated strongly as a prevention of accident, the monetary liability for every accident, as well as the trade mutual insurance inspection, conducing thereto; that it had caused a large reduction in negligence claims, and that litigation on test cases under the act had practically disappeared, so that friction was reduced to a minimum, while the administration cost nothing, as no lawyers were necessary. As regards railways, an influential employees' organization said that the principle was regarded as absolutely just and valuable to the recipients of the benefits and had kept many from the poorhouse; that the burden was generally conceded to have been transferred to the public; that it did not come out of wages, which had increased (only reaching them to the extent of 25 per cent of the compensation paid in unorganized trades); that litigation on questions of law had now practically disappeared, most cases being settled without even arbitration, and that arbitration cost little, generally under £5 ($24.33) a case; that the act had tended to prevent accidents, owing to expense now arising for every accident; moreover, that there had been no case of deliberate self-injury on railroads. A representative of the coal miners corroborated the fact that all labor was in favor of the act and illustrated the almost automatic working of it in the case of the Durham miners.

The parliamentary attitude toward workmen's compensation is shown by the fact that the compensation act of 1897 had been introduced and passed by the Conservative party, while, in 1906, the opposite party, then in power—the Liberal party—introduced and passed an amending bill, extending the principles of the act to practically every relation of master and servant, and adding thereto compensation for certain specified trade diseases. The act of 1906 becomes operative after July 1, 1907. The text of this act is given in full in this bulletin.

Laws of a similar character to the workmen's compensation acts have superseded the negligence basis for treatment of industrial accidents in almost all the countries of Europe, as well as in the colonies of England. However, when it is remembered that England is a free-trade country, with consequent difficulty in transferring the burden of the act to their foreign consumers, their nine years' experience of the satisfactory working of it is the strongest possible argument in favor of the feasibility of such legislation. Considering the overwhelming extent to which the energies of this country are directed into mechanical industry and the high ratio of accident to population therefrom, entailing such widespread hardship through the haphazard treatment of each accident on the negligence basis, with its result of serious injustice in so many cases to employer and workmen alike, as well as the enormous waste of energy and money in the ever-increasing volume of personal-injury litigation, which clogs our courts, it is manifest that the subject requires the earnest and careful consideration of serious people. Nor is it unlikely that the principle of a wise and practical step toward the solution of this difficult, but most important, subject may be found in the British workmen's compensation acts.

WORKMEN'S COMPENSATION ACT, 1897.

Following is the text of the workmen's compensation act, 1897, and of the workmen's compensation act, 1900, which extends the benefits of the act of 1897 to workmen in agriculture:

AN ACT To amend the law with respect to compensation to workmen for accidental injuries suffered in the course of their employment [6th Aug., 1897].

*Be it enacted by * * * Parliament assembled, and by the authority of the same, as follows:*

1.—(1) If in any employment to which this act applies personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the first schedule to this act.

(2) Provided that—

(*a*) The employer shall not be liable under this act in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he was employed;

(*b*) When the injury was caused by the personal negligence or willful act of the employer, or of some person for whose act or default the employer is responsible, nothing in this act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this act or take the same proceedings as were open to him before the commencement of this act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this act, and shall not be liable to any proceedings independently of this act, except in case of such personal negligence or willful act as aforesaid.

(*c*) If it is proved that the injury to a workman is attributable to the serious and willful misconduct of that workman, any compensation claimed in respect of that injury shall be disallowed.

(3) If any question arises in any proceedings under this act as to the liability to pay compensation under this act (including any question as to whether the employment is one to which this act applies), or as to the amount or duration of compensation under this act, the question, if not settled by agreement, shall, subject to the provisions of the first schedule to this act, be settled by arbitration, in accordance with the second schedule to this act.

(4) If, within the time hereinafter in this act limited for taking proceedings, an action is brought to recover damages independently of this act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff shall so choose, proceed to assess such compensation, and shall be at liberty to deduct from such compensation all the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this act.

In any proceeding under this subsection, when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this act.

(5) Nothing in this act shall affect any proceeding for a fine under the enactments relating to mines or factories, or the application of any such fine; but if any such fine, or any part thereof, has been applied for the benefit of the person injured, the amount so applied shall be taken into account in estimating the compensation under this act.

2.—(1) Proceedings for the recovery under this act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as prac-

ticable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death. Provided always that the want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings, if it is found in the proceedings for settling the claim that the employer is not prejudiced in his defense by the want, defect, or inaccuracy, or that such want, defect, or inaccurracy was occasioned by mistake or other reasonable cause.

(2) Notice in respect of an inquiry under this act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3) The notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(4) The notice may also be served by post by registered letter, addressed to the person on whom it is to be served at his last known place of residence or place of business, and if served by post shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

(5) Where the employer is a body of persons corporate or unincorporate, the notice may also be served by delivering the same at or by sending it by post in a registered letter addressed to the employer at the office, or, if there be more than one office, any one of the offices of such body.

3. (1) If the registrar of friendly societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, is on the whole not less favorable to the general body of workmen and their dependents than the provisions of this act, the employer may, until the certificate is revoked, contract with any of those workmen that the provisions of the scheme shall be substituted for the provisions of this act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this act shall apply notwithstanding any contract to the contrary made after the commencement of this act.

(2) The registrar may give a certificate to expire at the end of a limited period not less than five years.

(3) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring.

(4) If complaint is made to the registrar of friendly societies by or on behalf of the workmen of any employer that the provisions of any scheme are no longer on the whole so favorable to the general body of workmen of such employer and their dependents as the provisions of this act, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the registrar shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5) When a certificate is revoked or expires any moneys or securities held for the purpose of the scheme shall be distributed as may be arranged between the employer and workmen, or as may be determined by the registrar of friendly societies in the event of a difference of opinion.

(6) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the registrar of friendly societies.

(7) The chief registrar of friendly societies shall include in his annual report the particulars of the proceedings of the registrar under this act.

4. Where, in an employment to which this act applies, the undertakers as hereinafter defined contract with any person for the execution by or under such contractor of any work, and the undertakers would, if such work were executed by workmen immediately employed by them, be liable to pay compensation under this act to those workmen in respect of any accident arising out of and in the course of their employment, the undertakers shall be liable to pay to any workman employed in the execution of the work any compensation which is payable to the workman (whether under this act or in respect of personal negligence or willful act independently of this act) by such contractor, or would be so payable if such contractor were an employer to whom this act applies.

Provided that the undertakers shall be entitled to be indemnified by any other person who would have been liable independently of this section.

This section shall not apply to any contract with any person for the execution by or under such contractor of any work which is merely ancillary or incidental to and is no part of or process in the trade or business carried on by such undertakers respectively.

5. (1) Where any employer becomes liable under this act to pay compensation in respect of any accident, and is entitled to any sum from insurers in respect of the amount due to a workman under such liability, then, in the event of the employer becoming bankrupt or making a composition or arrangement with his creditors, or if the employer is a company of the company having commenced to be wound up, such workman shall have a first charge upon the sum aforesaid for the amount so due, and the judge of the county court may direct the insurers to pay such sum into the Post Office Savings Bank in the name of the registrar of such court and order the same to be invested or applied in accordance with the provisions of the first schedule hereto with reference to the investment in the Post Office Savings Bank of any sum allotted as compensation, and those provisions shall apply accordingly.

(2) In the application of this section to Scotland, the words "have a first charge upon" shall mean "be preferentially entitled to."

6. Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof, the workman may, at his option, proceed either at law against that person to recover damages or against his employer for compensation under this act, but not against both, and if compensation be paid under this act, the employer shall be entitled to be indemnified by the said other person.

7. (1) This act shall apply only to employment by the undertakers as hereinafter defined, on or in or about a railway, factory, mine, quarry, or engineering work, and to employment by the undertakers as hereinafter defined on, in, or about any building which exceeds 30 feet in height, and is either being constructed or repaired by means of a scaffolding, or being demolished, or on which machinery driven by steam, water, other mechanical power is being used for the purpose of the construction, repair, or demolition thereof.

(2) In this act—

"Railway" means the railway of any railway company to which the regulation of railways act, 1873, applies, and includes a light railway made under the light railways act, 1896; and "railway" and "railway company" have the same meaning as in the said acts of 1873 and 1896;

"Factory" has the same meaning as in the factory and workshop acts, 1878 to 1891, and also includes any dock, wharf, quay, warehouse, machinery, or plant to which any provision of the factory acts is applied by the factory and workshop act, 1895, and every laundry worked by steam, water, or other mechanical power;

"Mine" means a mine to which the coal mines regulation act, 1887, of the metalliferious mines regulation act, 1872, applies;

"Quarry" means a quarry under the quarries act, 1894.

"Engineering work" means any work of construction or alteration or repair of a railroad, harbor, dock, canal, or sewer, and includes any other work for the construction, alteration, or repair of which machinery driven by steam, water, or other mechanical power is used;

"Undertakers" in the case of a railway means the railway company; in the case of a factory, quarry, or laundry means the occupier thereof within the meaning of the factory and workshop acts, 1878 to 1895; in the case of a mine means the owner thereof within the meaning of the coal mines regulation act, 1887, or the metalliferous mines regulation act, 1872, as the case may be, and in the case of an engineering work means the person undertaking the construction, alteration, or repair; and in the case of a building means the persons undertaking the construction, repair, or demolition;

"Employer" includes any body or persons, corporate or unincorporate, and the legal personal representative of a deceased employer;

"Workman" includes every person who is engaged in an employment to which this act applies, whether by way of manual labor or otherwise, and whether his agreement is one of service or apprenticeship or otherwise, and is expressed or implied, is oral or in writing. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependents or other person to whom compensation is payable:

"Dependents" means—

(*a*) In England and Ireland, such members of the workman's family specified in the fatal-accidents act, 1846, as were wholly or in part dependent upon the earnings of the workman at the time of his death; and

(*b*) In Scotland, such of the persons entitled according to the law of Scotland to sue the employer for damages or solatium in respect of the death of the workman as were wholly or in part dependent upon the earnings of the workman at the time of his death.

(3) A workman employed in a factory which is a shipbuilding yard shall not be excluded from this act by reason only that the accident arose outside the yard in the course of his work upon a vessel in any dock, river, or tidal water near the yard.

8.—(1) This act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to any employment by or under the Crown to which this act would apply if the employer were a private person.

(2) The Treasury may, by warrant laid before Parliament, modify for the purposes of this act their warrant made under section 1 of the superannuation act, 1887, and notwithstanding anything in that act, or any such warrant, may frame a scheme with a view to its being certified by the registrar of friendly societies under this act.

9. Any contract existing at the commencement of this act whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment shall not, for the purposes of this act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this act.

10.—(1) This act shall come into operation on the 1st day of July, 1898.

(2) This act may be cited as the workmen's compensation act, 1897.

SCHEDULES.

First Schedule.

SCALE AND CONDITIONS OF COMPENSATION.

Scale.—(1) The amount of compensation under this act shall be—

(*a*) Where death results from the injury—

(i) If the workman leaves any dependents wholly dependent upon his earnings at the time of his death, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of £150 ($729.98) whichever of those sums is the larger, but not exceeding in any case £300 ($1,459.95), provided that the amount of any weekly payments made under this act shall be deducted from such sum, and if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be 156 times his average weekly earnings during the period of his actual employment under the said employer;

(ii) If the workman does not leave any such dependents, but leaves any dependents in part dependent upon his earnings at the time of his death, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this act, to be reasonable and proportionate to the injury to the said dependents; and

(iii) If he leaves no dependents, the reasonable expenses of his medical attendance and burial, not exceeding £10 ($48.67);

(*b*) Where total or partial incapacity for work results from the injury, a weekly payment during the incapacity after the second week, not exceeding 50 per cent of his average weekly earnings during the previous 12 months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed £1 ($4.87).

(2) In fixing the amount of the weekly payment, regard shall be had to the difference between the amount of the average weekly earnings of the workman before the accident and the average amount which he is able to earn after the accident, and to any payment not being wages which he may receive from the employer in respect to his injury during the period of his incapacity.

(3) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and any proceeding under this act in relation to compensation, shall be suspended until such examination takes place.

(4) The payment shall, in case of death, be made to the legal personal representative of the workman, or, if he has no legal personal representative, to or for the benefit of his dependents, or, if he leaves no dependents, to the person to whom the expenses are due; and if made to the legal personal representative, shall be paid by him to or for the benefit of the dependents or other person entitled thereto under this act.

(5) Any question as to who is a dependent, or as to the amount payable to each dependent, shall, in default of agreement, be settled by arbitration under this act.

(6) The sum allotted as compensation to a dependent may be invested or otherwise applied for the benefit of the person entitled thereto, as agreed, or as ordered by the committee or other arbitrator.

(7) Any sum which is agreed or is ordered by the committee or arbitrator to be invested may be invested in whole or in part in the Post Office Savings Bank by the registrar of the county court in his name as registrar.

(8) Any sum to be so invested may be invested in the purchase of an annuity from the national debt commissioners through the Post Office Savings Bank, or be accepted by the postmaster general as a deposit in the name of the registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings bank, and the declaration to be made by a depositor, shall not apply to such sums.

(9) No part of any money invested in the name of the registrar of any county court in the Post Office Savings Bank under this act shall be paid out, except upon authority addressed to the postmaster general by the treasury or by the judge of the county court.

(10) Any person deriving any benefit from any moneys invested in a post-office savings bank under the provisions of this act may nevertheless open an account in a post-office savings bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings banks.

(11) Any workman receiving weekly payments under this act shall, if so required by the employer, or by any person by whom the employer is entitled under this act to be indemnified, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, or such other person; but if the workman objects to an examination by that medical practitioner, or is dissatisfied by the certificate of such practitioner upon his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed for the purpose of this act, as mentioned in the second schedule to this act, and the certificate of that medical practitioner as to the condition of the workman at the time of the examination shall be given to the employer and workman, and shall be conclusive evidence of that condition. If the workman refuses to submit himself to such examination or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

(12) Any weekly payment may be reviewed at the request of either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this act.

(13) Where any weekly payment has been continued for not less than six months, the liability therefor may, on the application by or on behalf of the employer, be redeemed by the payment of a lump sum, to be settled, in default of agreement, by arbitration under this act, and such lump sum may be ordered by the committee or arbitrator to be invested or otherwise applied as above mentioned.

(14) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

(15) Where a scheme certified under this act provides for payment of compensation by a friendly society, the provisions of the proviso to the first subsection of section 8, section 16, and section 41 of the friendly societies act, 1896, shall not apply to such society in respect of such scheme.

(16) In the application of this schedule to Scotland the expression "registrar of the county court" means "sheriff clerk of the county," and "judge of the county court" means "sheriff."

(17) In the application of this act to Ireland the provisions of the county officers and courts (Ireland) act, 1897, with respect to money deposited in the post-office savings bank under that act shall apply to money invested in the post-office savings bank under this act.

Second Schedule.

ARBITRATION.

The following provisions shall apply for settling any matter which under his act is to be settled by arbitration:

(1) If any committee, representative of an employer and his workmen, exists with power to settle matters under this act in the case of the employer and workmen, the matter shall, unless either party objects, by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of

such committee, or be referred by them in their discretion to arbitrate as hereinafter provided.

(2) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within three months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the county court judge, according to the procedure prescribed by rules of court, or if in England the lord chancellor so authorizes, according to the like procedure by a single arbitrator appointed by such county court judge.

(3) Any arbitrator appointed by the county court judge shall, for the purpose of this act, have all the powers of a county court judge, and shall be paid out of moneys to be provided by Parliament in accordance with regulations to be made by the treasury.

(4) The arbitration act, 1889, shall not apply to any arbitration under his act, but an arbitrator may, if he thinks fit, submit any question of law for the decision of the county court judge, and the decision of the judge on any question of law, either on such submission or in any case where he himself settles the matter under this act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the supreme court either party appeals to the court of appeal; and the county court judge, or the arbitrator appointed by him, shall, for the the purpose of an arbitration under this act, have the same powers of procuring the attendance of witnesses and the production of documents as if the claim for compensation had been made by plaint in the county court.

(5) Rules of court may make provision for the appearance in any arbitration under this act of any party by some other person.

(6) The costs of and incident to the arbitration and proceedings connected therewith shall be in the discretion of the arbitrator. The costs, whether before an arbitrator or in the county court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules.

(7) In the case of the death or refusal or inability to act of an arbitrator, a judge of the high court at chambers may, on application of any party, appoint a new arbitrator.

(8) Where the amount of compensation under this act shall have been ascertained, or any weekly payment varied, or any other matter decided, under this act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the said committee or arbitrator, or by any party interested, to the registrar of the county court for the district in which any person entitled to such compensation resides, who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the said memorandum shall for all purposes be enforceable as a county court judgment. Provided that the county court judge may at any time rectify such register.

(9) Where any matter under this act is to be done in a county court, or by, to, or before the judge or registrar of a county court, then, unless the contrary intention appear, the same shall, subject to rules of court, be done in, or by, to, or before the judge or registrar of the county court of the district in which all the parties concerned reside, or if they reside in different districts the district in which the accident out of which the said matter arose occurred, without prejudice to any transfer in manner provided by rules of court.

(10) The duty of a county court judge under this act, or of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the county court, and the officers of the court shall act accordingly, and rules of court may be made both for any purpose for which this act authorizes rules of court to be made, and also generally for carrying into effect this act so far as it affects the county court, or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator, and such rules may, in England, be made by the five judges of the county courts appointed for the making of rules under section 164 of the county courts act, 1888, and when allowed by the Lord Chancellor, as provided by that section, shall have full effect without any further consent.

(11) No court fee shall be payable by any party in respect of any proceeding under this act in the county court prior to the award.

(12) Any sum awarded as compensation shall be paid on the receipt of the person to whom it is payable under any agreement or award, and his solicitor or agent shall not be entitled to recover from him, or to claim a lien on, or deduct any amount for costs from, the said sum awarded, except such sum as may be awarded by the arbitrator or county court judge, on an application made by either party to determine the amount of costs to be paid to the said solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

(13) The secretary of state may appoint legally qualified medical practitioners for the purpose of this act, and any committee, arbitrator, or judge may, subject to regulations made by the secretary of state and the treasury, appoint any such practitioner to report on any matter which seems material to any question arising in the arbitration; and the expense of any such medical practitioner shall, subject to treasury regulations, be paid out of moneys to be provided by Parliament.

(14) In the application of this schedule to Scotland—

(*a*) "Sheriff" shall be substituted for "county court judge," "sheriff court" for "county court," "action" for "plaint," "sheriff clerk" for "registrar of the county court," and "act of sederunt" for "rules of court."

(*b*) Any award or agreement as to compensation under this act may be competently recorded for execution in the books of council and session or sheriff court books, and shall be enforceable in like manner as a recorded decree arbitral.

(*c*) Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by the fifty-second section of the sheriff courts (Scotland) act, 1876, save only that parties may be represented by any person authorized in writing to appear for them and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the court of session, who may hear and determine the same finally, and remit to the sheriff with instruction as to the judgment to be announced.

(15) Paragraphs 4 and 7 of this schedule shall not apply to Scotland.

(16) In the application of this schedule to Ireland the expression "county court judge" shall include the recorder of any city or town.

WORKMEN'S COMPENSATION ACT, 1900.

An act to extend the benefits of the workmen's compensation act, 1897, to workmen in agriculture [30th July, 1900].

*Be it enacted by * * * Parliament assembled, and by the authority of the same, as follows:*

1. (1) From and after the commencement of this act, the workmen's compensation act, 1897, shall apply to the employment of workmen in agriculture by any employer who habitually employs one or more workmen in such employment.

(2) Where any such employer agrees with a contractor for the execution by or under that contractor of any work in agriculture, section 4 of the workmen's compensation act, 1897, shall apply in respect of any workman employed in such work as if that employer were an undertaker within the meaning of that act.

Provided that where the contractor provides and uses machinery driven by mechanical power for the purpose of threshing, plowing, or other agricultural work, he, and he alone, shall be liable under this act to pay compensation to any workman employed by him on such work.

(3) Where any workman is employed by the same employer mainly in agriculture but partly or occasionally in other work, this act shall apply also to the employment of the workman in such other work.

The expression "agriculture" includes horticulture, forestry, and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry, or bees, and the growth of fruit and vegetables.

2. This act may be cited as the workmen's compensation act, 1900, and shall be read as one with the workmen's compensation act, 1897, and that act and this act may be cited together as the workmen's compensation acts, 1897 and 1900.

3. This act shall come into operation on the 1st day of July, 1901.

Changes made by the Amending Act—The Workmen's Compensation Act of 1906.

(In effect July 1, 1907.)

The extension of the scope of the old act—

By covering all manual workers and all other employees who earn $1,216.63 per annum or less (including seamen), under contract of service or apprenticeship (policemen and home workers alone excepted). (Clauses 7 and 13.)

By covering certain scheduled diseases resulting from occupation, with power in the secretary of state to add to them. (Clause 8 and third schedule.)

By compensating from date of accident excepting when total period of disability is less than 14 days, in which cases first 7 days not to be compensated (clause 1 (2), (*a*), and first schedule (1), proviso (*b*)) instead of including entirely the first two weeks.

By compensating death and serious permanent disablement cases, though caused by serious and willful misconduct (clause 1 (2), (*c*)). (It was pointed out that the sufferers in such cases were the family of the negligent man rather than the negligent man himself.)

By adding to the dependent relatives illegitimate children and parents and grandparents thereof; brother, sister, half brother. (Clause 13.)

By raising the maximum allowance of minors to full wages, not exceeding $2.43 per week (first schedule (1), (*b*), proviso (*b*)) and authorizing increase of their compensation to half what they would have been earning as their ages advanced. (First schedule (16), proviso.)

By changing the basis of the compensation from the "actual" earnings in the service to the wages "ordinarily earned in the occupation." (First schedule (2).)

By removing the restriction that the accident must happen "on, in, or about employer's premises."

Other changes:

Limiting the amount of commutations of weekly benefits to 75 per cent of the annuity value of such weekly payments in permanent cases in order to promote commutation of them. (First schedule (17).)

Controlling the commutation by permitting official discretion as to registering or refusing to register, if amount insufficient, or obtained by undue influence or improper means; and if registered by authorizing the judge within six months to upset the settlement if satisfied it was obtained by undue influence or improper means. Unregistered agreements made not to be binding. (Second schedule (9) and (10)).

Minor changes were—

Allowing the judge to assess "part of the costs, if the employee sued and failed under the negligence law" (instead of only "the whole" of them required by the old act) against him; in practice the judges having imposed no penalty, considering the total costs too high a penalty. And allowing the employee to receive the fines imposed on employers under the factory acts in addition to his compensation. (Sec. 1.)

For "failure to give notice," absence from the United Kingdom was specified as an acceptable excuse. (Sec. 2.)

In cases of "contracting into schemes more favorable than the act," the discretion of the Government official in deciding was somewhat restricted, and a proviso was added "that a workman may withdraw from any scheme." (Sec. 3.)

Though the undertaker, now called the principal, is still liable to subcontractor's men, section 4 limits the liability to "accidents on the premises or work under the control of the principal," and also for accidents caused by strangers, with a right to recovery over against the subcontractor or stranger, the workman, however, being permitted an alternative remedy against both. (Secs. 4 and 6.)

If "insolvency" occurs, vests the rights of employers (if insured) against their insurers in the workmen, and makes them creditors of the employers' estates for any unpaid balance of compensation due them; also giving a priority on the bankrupt's estate up to $487; with a special priority for "minors," provided there is no such insurance. (Sec. 5.)

Provides for reports to the State by employers of all injuries and payments. (Sec. 12.)

Limits the amount payable in case of partial incapacity. (First schedule (3).)

Death payments (and those to persons under legal disability) are required "to be paid into the county court." (Unless no dependents), distributable according to its discretion. (First schedule (5) and (7).)

More minute provision is made than in the old act "for deciding" disputes as to "who is a dependent" and as to "amounts payable to each." (First schedule (8).)

The court is authorized to vary former orders or awards, as to apportionment or investment, on change of circumstances. (First schedule (9).)

Provisions are made for examination by the medical referee paid by the State (sec. 10), and his certificate to be final, in six days after copy of report of either the employer's or workman's doctor is furnished, if a disagreement exists. (First schedule (14) and (15).)

Weekly-payment cases, on the injured workman ceasing to reside in the United Kingdom, unless the medical referee certifies the injury is likely to be permanent. (First schedule (18).)

The county court judge is permitted to use a medical referee as an assessor. (Second schedule (5).)

Costs in arbitrations may be reviewed by the judge. (Second schedule (7).)

Authorizes the use of medical referee by committee, arbitrator, or judge. (Second schedule (15).)

The secretary of state can confer on any committee of employer and workmen the powers conferred on county courts. (Second schedule (16).)

BRITISH WORKMEN'S COMPENSATION ACT OF 1906.

In the following pages is given in full the text of the British workmen's compensation act of 1906, enacted December 21, 1906, to take effect July 1, 1907. It is given here to complete the record to date of British legislation in regard to the compensation of workmen for injuries received in their employment:

AN ACT To consolidate and amend the law with respect to compensation to workmen for injuries suffered in the course of their employment [21st Dec., 1906].

*Be it enacted by * * * Parliament assembled, and by the authority of the same, as follows:*

1. (1) If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the first schedule of this act.

(2) Provided that—

(*a*) The employer shall not be liable under this act in respect of any injury which does not disable the workman for a period of at least one week from earning full wages at the work at which he was employed.

(*b*) When the injury was caused by the personal negligence or willful act of the employer, or of some person for whose act or default the employer is responsible, nothing in this act shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this act or take proceedings independently of this act; but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this act, and shall not be liable to any proceedings independently of this act except in case of such personal negligence or willful act as aforesaid.

(*c*) If it is proved that the injury to a workman is attributable to the serious and willful misconduct of that workman, any compensation claimed in respect of that injury shall, unless the injury results in death or serious and permanent disablement be disallowed.

(3) If any question arises in any proceedings under this act as to the liability to pay compensation under this act (including any question as to whether the person injured is a workman to whom this act applies), or as to the amount or duration of compensation under this act, the question, if not settled by agreement, shall, subject to the provisions of the first schedule of this act, be settled by arbitration, in accordance with the second schedule of this act.

(4) If, within the time hereinafter in this act limited for taking proceedings, an action is brought to recover damages independently of this act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this act. In any proceeding under this subsection, when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this act.

(5) Nothing in this act shall affect any proceeding for a fine under the enactments relating to mines, factories, or workshops, or the application of any such fine.

2. (1) Proceedings for the recovery under this act of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as

practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death.

Provided always that—

(*a*) The want of or any defect or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his defense by the want, defect, or inaccuracy, or that such want, defect, or inaccuracy was occasioned by mistake, absence from the United Kingdom, or other reasonable cause; and

(*b*) The failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the United Kingdom, or other reasonable cause.

(2) Notice in respect of an injury under this act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

(3) The notice may be served by delivering the same at, or sending it by post in a registered letter addressed to, the residence or place of business of the person on whom it is to be served.

(4) Where the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to, the employer at the office, or, if there be more than one office, any one of the offices of such body.

3. (1) If the registrar of friendly societies, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit, or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favorable to the workmen and their dependents than the corresponding scales contained in this act, and that, where the scheme provides for contributions by the workmen, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which the workmen would have been entitled under this act, and that a majority (to be ascertained by ballot) of the workmen to whom the scheme is applicable are in favor of such scheme, the employer may, whilst the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this act, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this act shall apply notwithstanding any contract to the contrary made after the commencement of this act.

(2) The registrar may give a certificate to expire at the end of a limited period of not less than five years, and may from time to time renew with or without modifications such a certificate to expire at the end of the period for which it is renewed.

(3) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring, or which does not contain provisions enabling a workman to withdraw from the scheme.

(4) If complaint is made to the registrar of friendly societies by or on behalf of the workmen of any employer that the benefits conferred by any scheme no longer conform to the conditions stated in subsection (1) of this section, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the registrar shall examine into the complaint, and, if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.

(5) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall, after due provision has been made to discharge the liabilities already accrued, be distributed as may be arranged between the employer and workmen, or as may be determined by the registrar of friendly societies in the event of a difference of opinion.

(6) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such inquiries and to furnish all such accounts in regard to the scheme as may be made or required by the registrar of friendly societies.

(7) The chief registrar of friendly societies shall include in his annual report the particulars of the proceedings of the registrar under this act.

(8) The chief registrar of friendly societies may make regulations for the purpose of carrying this section into effect.

4.—(1) Where any person (in this section referred to as the principal), in the course of or for the purposes of his trade or business, contracts with any other person (in this

section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this act which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal, then, in the application of this act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed: *Provided*, That where the contract relates to thrashing, plowing, or other agricultural work, and the contractor provides and uses machinery driven by mechanical power for the purpose of such work, he, and he alone, shall be liable under this act to pay compensation to any workman employed by him on such work.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section, and all question as to the right to and amount of any such indemnity shall, in default of agreement, be settled by arbitration under this act.

(3) Nothing in this section shall be construed as preventing a workman recovering compensation under this act from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on or in or about premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.

5.—(1) Where any employer has entered into a contract with any insurers in respect of any liability under this act to any workman, then, in the event of the employer becoming bankrupt or making a composition or arrangement with his creditors, or if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the enactments relating to bankruptcy and the winding up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and remedies and be subject to the same liabilities as if they were the employer, so, however, that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

(2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the bankruptcy or liquidation.

(3) There shall be included among the debts which, under section 1 of the preferential payments in bankruptcy act, 1888, and section 4 of the preferential payments in bankruptcy (Ireland) act, 1889, are in the distribution of the property of a bankrupt and in the distribution of the assets of a company being wound up to be paid in priority to all other debts, the amount, not exceeding in any individual case, £100, due in respect of any compensation the liability wherefor accrued before the date of the receiving order or the date of the commencement of the winding up, and those acts and the preferential payments in bankruptcy amendment act, 1897, shall have effect accordingly. Where the compensation is a weekly payment, the amount due in respect thereof shall, for the purposes of this provision, be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the first schedule to this act.

(4) In the case of the winding up of a company within the meaning of the Stannaries Act, 1887, such an amount as aforesaid, if the compensation is payable to a miner or the dependents of a miner, shall have the like priority as is conferred on wages of miners by section 9 of that act, and that section shall have effect accordingly.

(5) The provisions of this section with respect to preferences and priorities shall not apply where the bankrupt or the company being wound up has entered into such a contract with insurers as aforesaid.

(6) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

6. Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

(1) The workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this act for such compensation, but shall not be entitled to recover both damages and compensation; and

(2) If the workman has recovered compensation under this act, the person by whom the compensation was paid, and any person who has been called on to pay an indemnity under the section of this act relating to subcontracting, shall be entitled to be indemnified by the person so liable to pay damages as aforesaid, and all questions as

to the right to an amount of any such indemnity shall, in default of agreement, be settled by action, or, by consent of the parties, by arbitration under this act.

7.—(1) This act shall apply to masters, seamen, and apprentices to the sea service and apprentices in the sea-fishing service, provided that such persons are workmen within the meaning of this act and are members of the crew of any ship registered in the United Kingdom or of any other British ship or vessel of which the owner or (if there is more than one owner) the managing owner or manager resides or has his principal place of business in the United Kingdom, subject to the following modifications:

(*a*) The notice of accident and the claim for compensation may, except where the person injured is the master, be served on the master of the ship as if he were the employer, but where the accident happened and the incapacity commenced on board the ship it shall not be necessary to give any notice of the accident.

(*b*) In the case of the death of the master, seamen, or apprentice the claim for compensation shall be made within six months after news of the death has been received by the claimant.

(*c*) Where an injured master, seaman, or apprentice is discharged or left behind in a British possession or in a foreign country, depositions respecting the circumstances and nature of the injury may be taken by any judge or magistrate in the British possession and by any British consular officer in the foreign country, and if so taken shall be transmitted by the person by whom they are taken to the board of trade, and such deposition or certified copies thereof shall in any proceedings for enforcing the claim be admissible in evidence as provided by sections 691 and 695 of the merchant shipping act, 1894, and those sections shall apply accordingly.

(*d*) In the case of the death of a master, seaman, or apprentice, leaving no dependents, no compensation shall be payable if the owner of the ship is, under the merchant shipping act, 1894, liable to pay the expenses of burial.

(*e*) The weekly payment shall not be payable in respect of the period during which the owner of the ship is, under the merchant shipping act, 1894, as amended by any subsequent enactment or otherwise, liable to defray the expenses of maintenance of the injured master, seaman, or apprentice.

(*f*) Any sum payable by way of compensation by the owner of a ship under this act shall be paid in full, notwithstanding anything in section 503 of the merchant shipping act, 1894 (which relates to the limitation of a shipowner's liability in certain cases of loss of life, injury, or damage), but the limitation on the owner's liability imposed by that section shall apply to the amount recoverable by way of indemnity under the section of this act relating to remedies both against employer and stranger as if the indemnity were damages for loss of life or personal injury.

(*g*) Subsections (2) and (3) of section 174 of the merchant shipping act, 1894 (which relates to the recovery of wages of seamen lost with their ship), shall apply as respects proceedings for the recovery of compensation by dependents of masters, seamen, and apprentices lost with their ship as they shall apply with respect to proceedings for the recovery of wages due to seamen and apprentices, and proceedings for the recovery of compensation shall in such a case be maintainable if the claim is made within 18 months of the date at which the ship is deemed to have been lost with all hands.

(2) This act shall not apply to such members of the crew of a fishing vessel as are remunerated by shares in the profits of the gross earnings of the working of such vessel.

(3) This section shall extend to pilots to whom Part X of the merchant shipping act, 1894, applies, as if a pilot when employed on any such ship as aforesaid were a seaman and a member of the crew.

8.—(1) Where—

(*i*) The certifying surgeon appointed under the factory and workshop act, 1901, for the district in which a workman is employed certifies that the workman is suffering from a disease mentioned in the third schedule to this act and is thereby disabled from earning full wages at the work at which he was employed; or,

(ii) A workman is, in pursuance of any special rules or regulations made under the factory and workshop act, 1901, suspended from his usual employment on account of having contracted any such disease; or,

(iii) The death of a workman is caused by any such disease, and the disease is due to the nature of any employment in which the workman was employed at any time within 12 months previous to the date of the disablement or suspension, whether under one or more employers, he or his dependents shall be entitled to compensation under this act as if the disease or suspension as aforesaid were a personal injury by accident arising out of any in the course of that employment, subject to the following modifications:

(*a*) The disablement or suspension shall be treated as the happening of the accident.

(*b*) If it is proved that the workman has at the time of entering the employment willfully and falsely represented himself in writing as not having previously suffered from the disease, compensation shall not be payable.

(*c*) The compensation shall be recoverable from the employer who last employed the workman during the said 12 months in the employment to the nature of which the disease was due.

Provided that—

(i) The workman or his dependents, if so required, shall furnish that employer with such information as to the names and addresses of all other employers who employed him in the employment during the said 12 months as he or they may possess, and, if such information is not furnished, or is not sufficient to enable that employer to take proceedings under the next following proviso, that employer, upon proving that the disease was not contracted while the workman was in his employment, shall not be liable to pay compensation; and,

(ii) If that employer alleges that the disease was in fact contracted while the workman was in the employment of some other employer and not while in his employment, he may join such other employer as a party to the arbitration, and if the allegation is proved that other employer shall be the employer from whom the compensation is to be recoverable; and,

(iii) If the disease is of such a nature as to be contracted by a gradual process, any other employers who, during the said 12 months, employed the workman in the employment to the nature of which the disease was due, shall be liable to make to the employer from whom compensation is recoverable such contributions as, in default of agreement, may be determined in the arbitration under this act for settling the amount of the compensation.

(*d*) The amount of the compensation shall be calculated with reference to the earnings of the workman under the employer from whom the compensation is recoverable.

(*e*) The employer to whom notice of the death, disablement, or suspension is to be given shall be the employer who last employed the workman during the said 12 months in the employment to the nature of which the disease was due, and the notice may be given, notwithstanding that the workman has voluntarily left his employment.

(*f*) If an employer or a workman is aggrieved by the action of a certifying or other surgeon in giving or refusing to give a certificate of disablement or in suspending or refusing to suspend a workman for the purposes of this section, the matter shall, in accordance with regulations made by the secretary of state, be referred to a medical referee, whose decision shall be final.

(2) If the workman at or immediately before the date of the disablement or suspension was employed in any process mentioned in the second column of the third schedule to this act, and the disease contracted is the disease in the first column of that schedule set opposite the description of the process, the disease, except where the certifying surgeon certifies that in his opinion the disease was not due to the nature of the employment, shall be deemed to have been due to the nature of that employment unless the employer proves the contrary.

(3) The secretary of state may make rules regulating the duties and fees of certifying and other surgeons (including dentists) under this section.

(4) For the purposes of this section the date of disablement shall be such date as the certifying surgeon certifies as the date on which the disablement commenced, or, if he is unable to certify such a date, the date on which the certificate is given.

Provided that—

(*a*) Where the medical referee allows an appeal against a refusal by a certifying surgeon to give a certificate of disablement, the date of disablement shall be such date as the medical referee may determine.

(*b*) Where a workman dies without having obtained a certificate of disablement, or is, at the time of death, not in receipt of a weekly payment on account of disablement, it shall be the date of death.

(5) In such cases, and subject to such conditions as the secretary of state may direct, a medical practitioner appointed by the secretary of state for the purpose shall have the powers and duties of a certifying surgeon under this section, and this section shall be construed accordingly.

(6) The secretary of state may make orders for extending the provisions of this section to other diseases and other processes, and to injuries due to the nature of any employment specified in the order not being injuries by accident, either without modification or subject to such modifications as may be contained in the order.

(7) Where, after inquiry held on the application of any employers or workman engaged in any industry to which this section applies, it appears that a mutual trade insurance company or society for insuring against the risks under this section has been established for the industry, and that a majority of the employers engaged in that industry are insured against such risks in the company or society and that the company or society consents, the secretary of state may, by provisional order, require all employers in that industry to insure in the company or society upon such terms and

under such conditions and subject to such exceptions as may be set forth in the order. Where such a company or society has been established, but is confined to employers in any particular locality or of any particular class, the secretary of state may, for the purposes of this provision, treat the industry as carried on by employers in that locality or of that class as a separate industry.

(8) A provisional order made under this section shall be of no force whatever unless and until it is confirmed by Parliament, and if, while the bill confirming any such order is pending in either House of Parliament, a petition is presented against the order, the bill may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private bills, and any act confirming any provisional order under this section may be repealed, altered, or amended by a provisional order made and confirmed in like manner.

(9) Any expenses incurred by the secretary of state in respect of any such order, provisional order, or confirming bill shall be defrayed out of moneys provided by Parliament.

(10) Nothing in this section shall affect the rights of a workman to recover compensation in respect of a disease to which this section does not apply if the disease is a personal injury by accident within the meaning of this act.

9.—(1) This act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to workmen employed by or under the Crown to whom this act would apply if the employer were a private person.

Provided that in the case of a person employed in the private service of the Crown, the head of that department of the royal household in which he was employed at the time of the accident shall be deemed to be his employer.

(2) The treasury may, by warrant laid before Parliament, modify for the purposes of this act their warrant made under section 1 of the superannuation act, 1887, and, notwithstanding anything in that act or any such warrant, may frame schemes with a view to their being certified by the registrar of friendly societies under this act.

10.—(1) The secretary of state may appoint such legally qualified medical practitioners to be medical referees for the purposes of this act as he may, with the sanction of the treasury, determine, and the remuneration of, and other expenses incurred by, medical referees under this act shall, subject to regulations made by the treasury, be paid out of moneys provided by Parliament.

Where a medical referee has been employed as a medical practitioner in connection with any case by or on behalf of an employer or workman or by any insurers interested, he shall not act as medical referee in that case.

(2) The remuneration of an arbitrator appointed by a judge of county courts under the second schedule to this act shall be paid out of moneys provided by Parliament in accordance with regulations made by the treasury.

11.—(1) If it is alleged that the owners of any ship are liable as such owners to pay compensation under this act, and at any time that ship is found in any port or river of England or Ireland, or within 3 miles of the coast thereof, a judge of any court of record in England or Ireland may, upon its being shown to him by any person applying in accordance with the rules of the court that the owners are probably liable as such to pay such compensation, and that none of the owners reside in the United Kingdom, issue an order directed to any officer of customs or other officer named by the judge requiring him to detain the ship until such time as the owners, agent, master, or consignee thereof have paid such compensation, or have given security, to be approved by the judge, to abide the event of any proceedings that may be instituted to recover such compensation and to pay such compensation and costs as may be awarded thereon; and any officer of customs or other officer to whom the order is directed shall detain the ship accordingly.

(2) In any legal proceeding to recover such compensation the person giving security shall be made defendant, and the production of the order of the judge made in relation to the security shall be conclusive evidence of the liability of the defendant to the proceeding.

(3) Section 692 of the merchant shipping act, 1894, shall apply to the detention of a ship under this act as it applies to the detention of a ship under that act, and if the owner of a ship is a corporation it shall for the purposes of this section be deemed to reside in the United Kingdom if it has an office in the United Kingdom at which service of writs can be effected.

12.—(1) Every employer in any industry to which the secretary of state may direct that this section shall apply shall, on or before such day in every year as the secretary of state may direct, send to the secretary of state a correct return specifying the number of injuries in respect of which compensation has been paid by him under this act during the previous year, and the amount of such compensation, together with such other particulars as to the compensation as the secretary of state may direct,

and in default of complying with this section shall be liable on conviction under the summary jurisdiction acts to a fine not exceeding £5 ($24.33).

(2) Any regulations made by the secretary of state containing such directions as aforesaid shall be laid before both Houses of Parliament as soon as may be after they are made.

13. In this act, unless the context otherwise requires—

"Employer" includes any body of persons, corporate or unincorporate, and the legal personal representative of a deceased employer, and, where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this act, be deemed to continue to be the employer of the workman whilst he is working for that other person.

"Workman" does not include any person employed otherwise than by way of manual labor whose remuneration exceeds £250 ($1,216.63) a year, or a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, or a member of a police force, or an outworker, or a member of the employer's family dwelling in his house, but, save as aforesaid, means any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labor, clerical work, or otherwise, and whether the contract is expressed or implied, is oral, or in writing.

Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependents or other persons to whom or for whose benefit compensation is payable.

"Dependents" means such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child and parent or grandparent, respectively.

"Member of a family" means wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister.

"Ship," "vessel," "seaman," and "port" have the same meanings as in the merchant shipping act, 1894.

"Manager," in relation to a ship, means the ship's husband or other person to whom the management of the ship is instrusted by or on behalf of the owner.

"Police force" means a police force to which the police act, 1890, or the police (Scotland) act, 1890, applies, the city of London police force, the Royal Irish constabulary, and the Dublin metropolitan police force.

"Outworker" means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, or repaired, or adapted for sale, in his own home or on other premises not under the control or management of the person who gave out the materials or articles.

The exercise and performance of the powers and duties of a local or other public authority shall, for the purposes of this act, be treated as the trade or business of the authority.

"County court," "judge of the county court," "register of the county court," "plaintiff," and "rules of court," as respects Scotland, mean, respectively, sheriff court, sheriff, sheriff clerk, pursuer, and act of sederunt.

14. In Scotland, where a workman raises an action against his employer independently of this act in respect of any injury caused by accident arising out of and in the course of the employment, the action, if raised in the sheriff court and concluding for damages under the employers' liability act, 1880, or alternatively at common law or under the employers' liability act, 1880, shall, notwithstanding anything contained in that act, not be removed under that act or otherwise to the court of session, nor shall it be appealed to that court otherwise than by appeal on a question of law; and for the purposes of such appeal the provisions of the second schedule to this act in regard to an appeal from the decision of the sheriff on any question of law determined by him as arbitrator under this act shall apply.

15.—(1) Any contract (other than a contract substituting the provisions of a scheme certified under the workmen's compensation act, 1897, for the provisions of that act) existing at the commencement of this act, whereby a workman relinquishes any right to compensation from the employer for personal injury arising out of and in the course of his employment, shall not, for the purposes of this act, be deemed to continue after the time at which the workman's contract of service would determine if notice of the determination thereof were given at the commencement of this act.

(2) Every scheme under the workmen's compensation act, 1897, in force at the commencement of this act shall, if recertified by the registrar of friendly societies, have effect as if it were a scheme under this act.

(3) The registrar shall recertify any such scheme if it is proved to his satisfaction that the scheme conforms, or has been so modified as to conform, with the provisions of this act as to schemes.

(4) If any such scheme has not been so recertified before the expiration of six months from the commencement of this act, the certificate thereof shall be revoked.

16.—(1) This act shall come into operation on the 1st day of July, 1907, but, except so far as it relates to references to medical referees and proceedings consequential thereon, shall not apply in any case where the accident happened before the commencement of this act.

(2) The workmen's compensation acts, 1897 and 1900, are hereby repealed, but shall continue to apply to cases where the accident happened before the commencement of this act, except to the extent to which this act applies to those cases.

17. This act may be cited as the workmen's compensation act, 1906.

First Schedule.

SCALE AND CONDITIONS OF COMPENSATION.

(1) The amount of compensation under this act shall be—

(*a*) Where death results from the injury—

(i) If the workman leaves any dependents wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of £150 ($729.98), whichever of those sums is the larger, but not exceeding in any case £300 ($1,459.95), provided that the amount of any weekly payments made under this act, and any lump sum paid in redemption thereof, shall be deducted from such sum, and, if the period of the workman's employment by the said employer has been less than the said three years, then the amount of his earnings during the said three years shall be deemed to be 156 times his average weekly earnings during the period of his actual employment under the said employer;

(ii) If the workman does not leave any such dependents, but leaves any dependents in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined, on arbitration under this act, to be reasonable and proportionate to the injury to the said dependents; and

(iii) If he leaves no dependents, the reasonable expenses of his medical attendance and burial, not exceeding £10 ($48.67);

(*b*) Where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding 50 per cent of his average weekly earnings during the previous 12 months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed £1 ($4.87):

Provided that—

(*a*) If the incapacity lasts less than two weeks no compensation shall be payable in respect of the first week; and

(*b*) As respects the weekly payments during total incapacity of a workman who is under 21 years of age at the date of the injury and whose average weekly earnings are less than 20 shillings ($4.87), 100 per cent shall be substituted for 50 per cent of his average weekly earnings, but the weekly payment shall in no case exceed 10 shillings ($2.43).

(2) For the purposes of the provisions of this schedule relating to "earnings" and "average weekly earnings" of a workman, the following rules shall be observed:

(*a*) Average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated. Provided that where by reason of the shortness of the time during which the workman has been in the employment of his employer, or the casual nature of the employment, or the terms of the employment, it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the 12 months previous to the accident, was being earned by a person in the same grade employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district;

(*b*) Where the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer and at

another time for another such employer, his average weekly earnings shall be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident;

(*c*) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause;

(*d*) Where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of his employment, the sum so paid shall not be reckoned as part of the earnings.

(3) In fixing the amount of the weekly payment, regard shall be had to any payment, allowance, or benefit which the workman may receive from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.

(4) Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and, if he refuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this act in relation to compensation, shall be suspended until such examination has taken place.

(5) The payment in the case of death shall, unless otherwise ordered as hereinafter provided, be paid into the county court, and any sum so paid into court shall, subject to rules of court and the provisions of this schedule, be invested, applied, or otherwise dealt with by the court in such manner as the court in its discretion thinks fit for the benefit of the persons entitled thereto under this act, and the receipt of the registrar of the court shall be a sufficient discharge in respect of the amount paid in:

Provided that, if so agreed, the payment in case of death shall, if the workman leaves no dependents, be made to his legal personal representative, or, if he has no such representative, to the person to whom the expenses of medical attendance and burial are due.

(6) Rules of court may provide for the transfer of money paid into court under this act from one court to another, whether or not the court from which it is to be transferred is in the same part of the United Kingdom as the court to which it is to be transferred.

(7) Where a weekly payment is payable under this act to a person under any legal disability, a county court may, on application being made in accordance with rules of court, order that the weekly payment be made during the disability into court, and the provisions of this schedule with respect to sums required by this schedule to be paid into court shall apply to sums paid into court in pursuance of any such order.

(8) Any question as to who is a dependent shall, in default of agreement, be settled by arbitration under this act, or, if not so settled before payment into court under this schedule, shall be settled by the county court, and the amount payable to each dependent shall be settled by arbitration under this act, or, if not so settled before payment into court under this schedule, by the county court. Where there are both total and partial dependents nothing in this schedule shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependents.

(9) Where, on application being made in accordance with rules of court, it appears to a county court that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of the various dependents, or for any other sufficient cause, an order of the court or an award as to the apportionment amongst the several dependents of any sum paid as compensation, or as to the manner in which any sum payable to any such dependent is to be invested, applied, or otherwise dealt with, ought to be varied, the court may make such order for the variation of the former order or the award, as in the circumstances of the case the court may think just.

(10) Any sum which under this schedule is ordered to be invested may be invested in whole or in part in the Post Office Savings Bank by the registrar of the county court in his name as registrar.

(11) Any sum to be so invested may be invested in the purchase of an annuity from the national debt commissioners through the Post Office Savings Bank, or be accepted by the postmaster general as a deposit in the name of the registrar as such, and the provisions of any statute or regulations respecting the limits of deposits in savings banks, and the declaration to be made by a depositor, shall not apply to such sums.

(12) No part of any money invested in the name of the registrar of any county court in the Post Office Savings Bank under this act shall be paid out, except upon

authority addressed to the postmaster general by the treasury or, subject to regulations of the treasury, by the judge or registrar of the county court.

(13) Any person deriving any benefit from any moneys invested in a post-office savings bank under the provisions of this act may, nevertheless, open an account in a post-office savings bank or in any other savings bank in his own name without being liable to any penalties imposed by any statute or regulations in respect of the opening of accounts in two savings banks, or of two accounts in the same savings bank.

(14) Any workman receiving weekly payments under this act shall, if so required by the employer, from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

(15) A workman shall not be required to submit himself for examination by a medical practitioner under paragraph (4) or paragraph (14) of this schedule otherwise than in accordance with regulations made by the secretary of state, or at more frequent intervals than may be prescribed by these regulations.

Where a workman has so submitted himself for examination by a medical practitioner, or has been examined by a medical practitioner selected by himself, and the employer or the workman, as the case may be, has within six days after such examination furnished the other with a copy of the report of that practitioner as to the workman's condition, then, in the event of no agreement being come to between the employer and the workman as to the workman's condition or fitness for employment, the registrar of a county court, on application being made to the court by both parties may, on payment by the applicants of such fee not exceeding £1 ($4.87) as may be prescribed, refer the matter to a medical referee.

The medical referee to whom the matter is so referred shall, in accordance with regulations made by the secretary of state, give a certificate as to the condition of the workman and his fitness for employment, specifying, where necessary, the kind of employment for which he is fit, and that certificate shall be conclusive evidence as to the matters so certified.

Where no agreement can be come to between the employer and the workman as to whether or to what extent the incapacity of the workman is due to the accident, the provisions of this paragraph shall, subject to any regulations made by the secretary of state, apply as if the question were a question as to the condition of the workman.

If a workman, on being required so to do, refuses to submit himself for examination by a medical referee to whom the matter has been so referred as aforesaid, or in any way obstructs the same, his right to compensation and to take or prosecute any proceeding under this act in relation to compensation, or, in the case of a workman in receipt of a weekly payment, his right to that weekly payment shall be suspended until such examination has taken place.

Rules of court may be made for prescribing the manner in which documents are to be furnished or served and applications made under this paragraph and the forms to be used for those purposes and, subject to the consent of the treasury, as to the fee to be paid under this paragraph.

(16) Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by arbitration under this act: *Provided*, That where the workman was at the date of the accident under 21 years of age, and the review takes place more than 12 months after the accident, the amount of the weekly payments may be increased to any amount not exceeding 50 per cent of the weekly sum which the workman would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding £1 ($4.87).

(17) Where any weekly payment has been continued for not less than six months, the liability therefor may, on application by or on behalf of the employer, be redeemed by the payment of a lump sum of such an amount as, where the incapacity is permanent, would, if invested in the purchase of an immediate life annuity from the national debt commissioners through the post-office savings bank, purchase an annuity for the workman equal to 75 per cent of the annual value of the weekly payment, and as in any other case may be settled by arbitration under this act, and such lump sum may be ordered by the committee or arbitrator or judge of the county court to be invested or otherwise applied for the benefit of the person entitled thereto: *Provided*, That nothing in this paragraph shall be construed as preventing agreements being made for the redemption of a weekly payment by a lump sum.

(18) If a workman receiving a weekly payment ceases to reside in the United Kingdom, he shall thereupon cease to be entitled to receive any weekly payment,

unless the medical referee certifies that the incapacity resulting from the injury is likely to be of a permanent nature. If the medical referee so certifies, the workman shall be entitled to receive quarterly the amount of the weekly payments accruing due during the preceding quarter so long as he proves, in such manner and at such intervals as may be prescribed by rules of court, his identity and the continuance of the incapacity in respect of which the weekly payment is payable.

(19) A weekly payment, or a sum paid by way of redemption thereof, shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

(20) Where under this schedule a right to compensation is suspended, no compensation shall be payable in respect of the period of suspension.

(21) Where a scheme certified under this act provides for payment of compensation by a friendly society, the provisions of the proviso to the first subsection of section 8, section 16, and section 41 of the friendly societies act, 1896, shall not apply to such society in respect of such scheme.

(22) In the application of this act to Ireland the provisions of the county officers and courts (Ireland) act, 1877, with respect to money deposited in the post-office savings bank under that act shall apply to money invested in the post-office savings bank under this act.

Second Schedule.

ARBITRATION, ETC.

(1) For the purpose of settling any matter which under this act is to be settled by arbitration, if any committee, representative of any employer and his workmen, exists with power to settle matters under this act in the case of the employer and workmen, the matter shall, unless either party objects by notice in writing sent to the other party before the committee meet to consider the matter, be settled by the arbitration of such committee, or be referred by them in their discretion to arbitration as hereinafter provided.

(2) If either party so objects, or there is no such committee, or the committee so refers the matter or fails to settle the matter within six months from the date of the claim, the matter shall be settled by a single arbitrator agreed on by the parties, or in the absence of agreement by the judge of the county court, according to the procedure prescribed by rules of court.

(3) In England the matter instead of being settled by the judge of the county court may, if the lord chancellor so authorizes, be settled according to the like procedure by a single arbitrator appointed by that judge, and the arbitrator so appointed shall, for the purposes of this act, have all the powers of that judge.

(4) The arbitration act, 1889, shall not apply to any arbitration under this act; but a committee or an arbitrator may, if they or he think fit, submit any question of law for the decision of the judge of the county court, and the decision of the judge on any question of law, either on such submission or in any case where he himself settles the matter under this act, or where he gives any decision or makes any order under this act, shall be final, unless within the time and in accordance with the conditions prescribed by rules of the supreme court either party appeals to the court of appeal; and the judge of the county court, or the arbitrator appointed by him, shall, for the purpose of proceedings under this act, have the same powers of procuring the attendance of witnesses and the production of documents as if the proceedings were an action in the county court.

(5) A judge of county courts may, if he thinks fit, summon a medical referee to sit with him as an assessor.

(6) Rules of court may make provision for the appearance in any arbitration under this act of any party by some other person.

(7) The costs of and incidental to the arbitration and proceedings connected therewith shall be, in the discretion of the committee, arbitrator, or judge of the county court, subject as respects such judge and an arbitrator appointed by him to rules of court. The costs, whether before a committee or an arbitrator or in the county court, shall not exceed the limit prescribed by rules of court, and shall be taxed in manner prescribed by those rules, and such taxation may be reviewed by the judge of the county court.

(8) In the case of the death or refusal or inability to act of an arbitrator, the judge of the county court may, on the application of any party, appoint a new arbitrator.

(9) Where the amount of compensation under this act has been ascertained or any weekly payment varied or any other matter decided under this act, either by a committee or by an arbitrator or by agreement, a memorandum thereof shall be sent, in manner prescribed by rules of court, by the committee or arbitrator, or by any party

interested, to the registrar of the county court, who shall, subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a county court judgment.

Provided that—

(*a*) No such memorandum shall be recorded before seven days after the dispatch by the registrar of notice to the parties interested; and

(*b*) Where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this act and the employer, in accordance with rules of court, proves that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the judge of the county court under the circumstances may think just; and

(*c*) The judge of the county court may at any time rectify the register; and

(*d*) Where it appears to the registrar of the county court, on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability, or to dependents, ought not to be registered by reason of the inadequacy of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration and refer the matter to the judge, who shall, in accordance with rules of court, make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just; and

(*e*) The judge may, within six months after a memorandum of an agreement as to the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable to a person under any legal disability, or to dependents, has been recorded in the register, order that the record be removed from the register on proof to his satisfaction that the agreement was obtained by fraud or undue influence or other improper means, and may make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just.

(10) An agreement as to the redemption of a weekly payment by a lump sum if not registered in accordance with this act shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the weekly payment is payable from liability to continue to make that weekly payment, and an agreement as to the amount of compensation to be paid to a person under a legal disability or to dependents, if not so registered, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless, in either case, he proves that the failure to register was not due to any neglect or default on his part.

(11) Where any matter under this act is to be done in a county court, or by, to, or before the judge or registrar of a county court, then, unless the contrary intention appear, the same shall, subject to rules of court, to be done in, or by, to, or before the judge or registrar of the county court of the district in which all the parties concerned reside, or if they reside in different districts the district prescribed by rules of court without prejudice to any transfer in manner provided by rules of court.

(12) The duty of a judge of county courts under this act, or in England of an arbitrator appointed by him, shall, subject to rules of court, be part of the duties of the county court, and the officers of the court shall act accordingly, and rules of court may be made both for any purpose for which this act authorizes rules of court to be made, and also generally for carrying into effect this act so far as it affects the county court, or an arbitrator appointed by the judge of the county court, and proceedings in the county court or before any such arbitrator, and such rules may in England be made by the five judges of county courts appointed for the making of rules under section 164 of the county courts act, 1888, and when allowed by the lord chancellor, as provided by that section, shall have full effect without any further consent.

(13) No court fee, except such as may be prescribed under paragraph 15 of the first schedule to this act, shall be payable by any party in respect of any proceedings by or against a workman under this act in the court prior to the award.

(14) Any sum awarded as compensation shall, unless paid into court under this act, be paid on the receipt of the person to whom it is payable under any agreement or award, and the solicitor or agent of a person claiming compensation under this act shall not be entitled to recover from him any costs in respect of any proceedings in an arbitration under this act, or to claim a lien in respect of such costs on, or deduct such costs from, the sum awarded or agreed as compensation, except the sum as may

be awarded by the committee, the arbitrator, or the judge of the county court, on an application made either by the person claiming compensation, or by his solicitor or agent, to determine the amount of costs to be paid to the solicitor or agent, such sum to be awarded subject to taxation and to the scale of costs prescribed by rules of court.

(15) Any committee, arbitrator, or judge may, subject to regulations made by the secretary of state and the treasury, submit to a medical referee for report any matter which seems material to any question arising in the arbitration.

(16) The secretary of state may, by order, either unconditionally or subject to such conditions or modifications as he may think fit, confer on any committee representative of any employer and his workmen, as respects any matter in which the committee act as arbitrators, or which is settled by agreement submitted to and approved by the committee, all or any of the powers conferred by this act exclusively on county courts, or judges of county courts. and may by the order provide how and to whom the compensation money is to be paid in cases where but for the order the money would be required to be paid into court, and the order may exclude from the operation of provisos (*d*) and (*e*) of paragraph (9) of this schedule agreements submitted to and approved by the committee, and may contain such incidental, consequential, or supplemental provisions as may appear to the secretary of state to be necessary or proper for the purposes of the order.

(17) In the application of this schedule to Scotland—

(*a*) "County court judgment" as used in paragraph 9 of this schedule means a recorded decree arbitral.

(*b*) Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by section 52 of the sheriff courts (Scotland) act, 1876, save only that parties may be represented by any person authorized in writing to appear for them, and subject to the declaration that it shall be competent to either party within the time and in accordance with the conditions prescribed by act of sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either division of the court of session, who may hear and determine the same and remit to the sheriff with instruction as to the judgment to be pronounced, and an appeal shall lie from either of such divisions to the House of Lords.

(*c*) Paragraphs 3, 4, and 8 shall not apply.

(18) In the application of this schedule to Ireland the expression "judge of the county court" shall include the recorder of any city or town, and an appeal shall lie from the court of appeal to the House of Lords.

THIRD SCHEDULE.

Description of disease.	Description of process.
Anthrax	Handling of wool, hair, bristles, hides, and skins.
Lead poisoning or its sequelæ	Any process involving the use of lead or its preparations or compounds.
Mercury poisoning or its sequelæ	Any process involving the use of mercury or its preparations or compounds.
Phosphorus poisoning or its sequelæ	Any process involving the use of phosphorus or its preparations or compounds.
Arsenic poisoning or its sequelæ	Any process involving the use of arsenic or its preparations or compounds.
Ankylostomiasis	Mining.

Where regulations or special rules made under any act of Parliament for the protection of persons employed in any industry against the risk of contracting lead poisoning require some or all of the persons employed in certain processes specified in the regulations or special rules to be periodically examined by a certifying or other surgeon, then, in the application of this schedule to that industry, the expression "process" shall, unless the secretary of state otherwise directs, include only the processes so specified.

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